S. HRG. 100-881

FEDERAL RECOGNITION OF THE LUMBEE INDIAN TRIBE OF NORTH CAROLINA

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2672

TO PROVIDE FEDERAL RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA

AUGUST 12, 1988
WASHINGTON, DC

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FEDERAL RECOGNITION OF THE LUMBEE INDIAN TRIBE OF NORTH CAROLINA

FRIDAY, AUGUST 12, 1988

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

Staff present: Patricia Zell, chief counsel; Virginia Boylan, special counsel; Sara Yager, professional staff; Dan Lewis, professional staff; Yvette Joseph, professional staff; and Marilyn Bruce, receptionist.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will come to order.

The Select Committee on Indian Affairs meets this morning to receive testimony on S. 2672, a bill to provide Federal recognition for the Lumbee Tribe of North Carolina.

In 1885, the Lumbee Tribe was recognized by the State of North Carolina, and the Lumbee School System was established by the State and run by the tribal members, with each community establishing a committee that determined eligibility and required proof of Lumbee ancestry through four generations back to the 1770's. These enrollments, in addition to census reports and church records, provide the basis of determining tribal membership today. Ethnologists are in agreement that the tribe descends primarily from the Cheraw Tribe, a Siouan-speaking tribe first encountered by Europeans in 1524.

In 1888, 100 years ago, the Lumbee Tribe made its first of what were to be many petitions for Federal recognition to the Congress. Today the Lumbee Tribe consists of approximately 36,000 members, most of whom reside in Robeson County and adjacent counties in North Carolina. If enacted, S. 2672 will provide Federal recognition to the Lumbee Tribe, and upon appropriation of funds, would authorize the provision of Federal services to the tribe. Federal laws of general application to Indians and Indian Tribes will also be extended to the tribe upon enactment.

At this juncture, without objection, a statement of the Senator from North Carolina, the Honorable Terry Sanford, will be made part of the record.

[Prepared statement of Senator Sanford appears in appendix.]
[Text of S. 2672 follows:]

II

100TH CONGRESS
2D SESSION

S. 2672

To provide Federal recognition for the Lumbee Tribe of North Carolina.

IN THE SENATE OF THE UNITED STATES

JULY 29, 1988

Mr. SANFORD introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide Federal recognition for the Lumbee Tribe of North Carolina.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Lumbee Recognition Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Lumbee Indians of Robeson and adjoining counties in North Carolina are descendants of coastal North Carolina Indian tribes, principally Cheraw, and

have remained a distinct Indian community since the time of contact with white settlers;

(2) the Lumbee Indians have been recognized by the State of North Carolina as an Indian tribe since 1885;

(3) the Lumbee Indians have sought Federal recognition as an Indian tribe since 1888; and

(4) the Lumbee Indians are entitled to Federal recognition of their status as an Indian tribe and the benefits, privileges, and immunities that accompany such status.

SEC. 3. FEDERAL RECOGNITION.

Notwithstanding the first section of the Act of June 7, 1956 (Chapter 375; 70 Stat. 255), Federal recognition is hereby extended to the Lumbee Indian Tribe of North Carolina. All laws and regulations of the United States of general application to Indians and Indian tribes shall apply to the Lumbee Indian Tribe of North Carolina and its members.

SEC. 4. SERVICES.

(a) ELIGIBILITY.—Notwithstanding the first section of the Act of June 7, 1956 (Chapter 375; 70 Stat. 255), the Lumbee Indian Tribe and its members shall be eligible for all services and benefits provided to Indians because of their status as federally recognized Indians by the Federal Government, except that members of the tribe shall not be enti-

tled to such services until the appropriation of funds for these purposes. For the purposes of the delivery of such services, those members of the tribe residing in Robeson and adjoining counties shall be deemed to be resident on or near an Indian reservation.

(b) DETERMINATION OF NEEDS AND BUDGET.—Upon verification of a tribal roll under section 5 by the Secretary of the Interior, the Secretary shall develop, in consultation with the Lumbee Indian Tribe, a determination of needs and a budget required to provide services to which the members of the tribe are eligible. The Secretary shall request appropriations for such funds as part of the first budget request submitted to the Congress after the fiscal year in which the tribal roll is verified.

SEC. 5. CONSTITUTION AND MEMBERSHIP.

(a) ORGANIZATION.—The Lumbee Indians shall organize for its common welfare and adopt a constitution and bylaws. Any constitution, bylaws, or amendments to the constitution or bylaws that are adopted by the tribe must be consistent with the terms of this Act and shall take effect only after such documents are filed with the Secretary of the Interior. The Secretary shall assist the tribe in the drafting of a constitution and bylaws, the conduct of an election with respect to such constitution, and the reorganization of the

government of the tribe under any such constitution and bylaws.

(b) MEMBERSHIP.—(1) Until the tribe adopts a constitution, the membership of the tribe shall, subject to review by the Secretary, consist of every individual who is named in the tribal membership roll that is in effect on the date of enactment of this Act.

(2) The review of the membership roll of the tribe shall be limited to verification of compliance with the membership criteria of the tribe as stated in the Petition for Federal Acknowledgment filed with the Secretary by the tribe on December 17, 1987. The Secretary shall complete his review and verification of the tribal roll within twelve months after the date of enactment of this Act.

SEC. 6. JURISDICTION.

(a) CIVIL AND CRIMINAL JURISDICTION.—The State of North Carolina shall exercise civil and criminal jurisdiction over the Indian country (as defined in section 1151 of title 18, United States Code) with respect to the Lumbee Indian Tribe only, in accordance with sections 401 and 402 of the Act of April 11, 1968 (82 Stat. 78; 25 U.S.C. 1321 and 1322), and section 403 of such Act (25 U.S.C. 1323) shall apply to such jurisdiction.

(b) ELIGIBILITY FOR CERTAIN LAND PROGRAMS.—Section 5 of the Act of June 18, 1934 (Chapter 576; 25

U.S.C. 465), and the Act of April 11, 1970 (84 Stat. 120; 25 U.S.C. 488 et seq.), shall apply to the Lumbee Indian Tribe with respect to lands within the exterior boundaries of Robeson and adjoining counties, North Carolina.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such funds as may be necessary to carry out this Act.

The CHAIRMAN. Our first witness today will be the Honorable Ross Swimmer, Assistant Secretary for Indian Affairs of the United States Department of the Interior.

Mr. Secretary, welcome, sir.

STATEMENT OF HON. ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY

Mr. SWIMMER. Thank you, Mr. Chairman.

Mr. Chairman, we do have a prepared statement that I would like to have introduced for the record, and I will attempt to summarize and give some other oral comments.

The CHAIRMAN. All prepared statements will be made part of the record in total.

Mr. SWIMMER. In addition to myself, I have some staff here from the Branch of Acknowledgement of the Bureau of Indian Affairs that I'm sure would be happy to join me if the committee has technical questions about the acknowledgement process.

As you have said, the Lumbee bill requests Federal recognition of a group of people that have not previously had tribal status as is known with the other Indian tribes that are recognized and part of the Federally-recognized tribes that we know today. They have asked Congress to provide this special status as an Indian tribe because of the uncertainty of the 1956 act and because of the time that we, the Bureau, estimate that it would take to process their petition. The 1956 act was an Act of Congress that quite possibly reads in a way that would not allow administrative recognition but would require Congressional recognition, even if the Branch of Acknowledgement of the BIA were to establish that this group met the criteria.

For that purpose, however, we would ask that at the very least, if it chooses to allow us to go through the acknowledgement process, that the Congress would amend the 1956 act to make it clear that that shall not be a bar for Lumbees coming into the system if they are acknowledged administratively.

Our position on the bill is to oppose it because we believe that the confirmation of tribal status on a group of people is something that should stand the test of the acknowledgement process and should continue to be a function of the administrative branch of Government. We believe that by taking the Lumbees out of the process it would be unfair, not only to them but to the other groups seeking recognition, which at this time number maybe a few dozen, those in process, those that have advised us and those that we think are coming in.

We believe that if Congress grants this waiver to this group, it should also be prepared to do so for other groups which, I contend, could easily number in the hundreds if such action is taken. In other words, it opens the political door to recognition, which is what we had hoped to eliminate by having an administrative process which could be followed by groups wishing recognition. The times when we have gone through the Congressional process is when we have had a tribe terminated by an Act of Congress, and

then Congress relieves that termination, but here, we have a group that has never been a tribe, at least within the context of Federal recognition.

A second reason for opposition is the sheer financial impact, which is estimated to be $30 to $100 million per year. I believe however, that if the Lumbees meet the requirements for recognition, they should not be denied simply because of financial issues.

If the Congress chooses to take this issue out of our hands, we do have some specific recommendations we would like to have considered as amendments.

The first is that we believe very strongly that civil and criminal jurisdiction should remain with the State and local government, as it has since the time of statehood. We don't believe that changing the jurisdictional relationships enhances their ability to function as a tribe or hampers that ability to function. We think that given the history of the relationship between the State and the local jurisdictions and this group of people, at least in one of the counties, I believe—perhaps Robeson County—almost 70 percent of the population could be descendants of this group of people, that there is no reason to have conflicting civil and criminal jurisdictions. We have found that where this is true in almost all other Indian cases, that it has contributed greatly to the lack of Indians' ability to develop economically, socially, and educationally.

We know that the Lumbee population, those that are participating in this group, are sophisticated, well-educated people who make up a dominant part of that population in North Carolina. We also know that there are groups in distant places like Baltimore and, in other States.

A second item that I think is important is that if they are to be Congressionally recognized, I would look at this as an opportunity to do something that I have talked about before this committee and others for some time, and that is to permit them an independent status in their relationship with the Bureau of Indian Affairs. Sure, we could set up another agency office in Robeson County, maybe even another area office in North Carolina and spend $4 or $5 million on staff and gear up to provide all of the same kinds of programmatic activities that we do in other areas, but what we're going to do is create another pocket of paternalism with these people by making decisions for them and reviewing their every action, the same as we do throughout Indian country.

These people are far along in their development and it would be a shame to reverse a history of self-determination that is already being exercised by forcing them into a guardianship/wardship relationship. We have provided language to the Congress already, the so-called "direct funding initiatives," that would give some tribes relief from some of the paternalism. I would hope that if recognition is granted, such a relationship could be developed with these people. We don't need to spend our money setting up bureaucracies of Indian agents and supervisors to run their tribe. Instead, where they need Federal support they should be able to request it directly and have Congress give it consideration as they to any other government. The BIA would simply be an agency to pass along the request and provide reports to Congress on the expenditures. Lands could be taken into trust, but our role would be as a titleholder.

They would retain the management of those lands just as they do now.

The most significant financial impact—and this is the third area that I would like to have the committee consider; you may get testimony from the Indian Health Service on this—but the third area that I'd like you to consider that has worked effectively, I know, in my State of Oklahoma and some other areas of Indian interest is with the Indian Health Service. Full medical care that these people would be entitled to, 30,000 to 40,000 people, could easily run in excess of $30 to $40 million.

Although I speak without authority from IHS on this issue, I would suggest both to them and to this committee that again, if this group is recognized, a similar relationship be developed with the Indian Health Service as I described with BIA. That is, a medical card system would be issued to Lumbees that would provide them access to medical care at any private or public institution they choose. Presumably health care is now available in this area, and if the Lumbees were to be incorporated into the Indian Health Service system, with the requirement for construction of new hospitals, new clinics, area offices, the whole of the Indian Health Service bureaucracy, much of that $30 to $40 million is going to go to support a bureaucracy, not to support medical care for these people.

It also would disrupt the existing medical delivery system of this area, and I'm afraid that it could have severe impacts in making Federal expenditures for non-medical related costs, specifically that of the bureaucracy.

Our position on recognition remains, however, that we do not believe the Congress is able to take the time necessary to do the research on a petition that has taken this group of people nearly 10 years to put together, and has recently been submitted to the Bureau of Indian Affairs for review. It has not even started through the most cursory process of review at this time. If the Congress were to do that in-depth review, we're talking about a staff of four to five people; it would take possibly two to four years, together with a lot of research assistants located in that particular area.

Our contention is that even if it takes four years or more, fine. To go through the acknowledgement process, we believe it would be time well spent and that we would be able to validate the issues necessary to prove that this group of people meets the criteria that every other new tribe in this country has had to meet, except in those cases where tribes have been Congressionally recognized.

I appreciate the opportunity to make this statement and would implore the committee to look at our proposed amendments. With that, I would be happy to answer any questions you might have.

[Prepared statement of Mr. Swimmer appears in appendix.]

The CHAIRMAN. When did the Lumbee Tribe file the application for this acknowledgment process?

Mr. SWIMMER. Let me have Hazel Elbert join me at the table to answer those kinds of questions.

Ms. ELBERT. Mr. Chairman, we received an undocumented petition from the Lumbees January 4, 1980. We received their documented petition December 17, 1987, and we have received supple-

ments to their membership list on February 4, 1988 and February 22, 1988.

The CHAIRMAN. Mr. Secretary, in listening to your statement I would gather that you are against the recognition of the Lumbees——

Mr. SWIMMER. I can't make that decision, Mr. Chairman.

The CHAIRMAN. Well, you've given every reason that you can think of, the costs involved and such. If that is the attitude of the administering body, would the Lumbees be wasting their time going through the acknowledgment process?

Mr. SWIMMER. Not at all. The reason I can't be for or against this petition is because I have not been able to do the research myself, nor have staff at the Bureau been able to do the research, but with the completed petition we could make an evaluation. It is my opinion that the opposition that the Administration takes is not the opposition to the Lumbees as a recognized tribe. It's the opposition that they have not met the requirements that the Congress and the Administration have previously put in place to determine whether they qualify. This group of people has never had a formal relationship with the Federal Government, treaty or otherwise. It is my feeling that before any group of people—there are literally hundreds of them, of Indian people living in communities throughout this country that are not today enjoying the benefits of being a member of an Indian tribe. It is my opinion that those hundreds of groups are going to come in here and ask for the same recognition. If we don't have some way to evaluate and separate and determine that in fact they have met the seven basic requirements—continued existence, tracing tribal ancestry, cultural, linguistic usage—if we can't establish that there wasn't a tribe involved, and simply a group of people who have come together, some of whom are of Indian descent, some are not, some may not be, it is impossible for us, and certainly for me, to sit here and tell you that I would favor the petition.

But no, I don't believe that there's any prejudice at all in us going through the process. We have done this successfully with several other tribes. In fact, a very recent situation, on appeal by the tribe, was determined after submitting further evidence to the Bureau that they were in fact a tribe under the requirements that we have here. They had originally been turned down.

I think that if a branch in the Bureau of Indian Affairs does something well, although it is time-consuming, it is the Branch of Acknowledgment. They are very qualified people, historians and anthropologists; it's one of the most professional core groups within the Bureau of Indian Affairs, and we take this very, very seriously.

The CHAIRMAN. Mr. Secretary, what is your definition of a North American Indian?

Mr. SWIMMER. Pardon?

The CHAIRMAN. How do you define a Native American Indian?

Mr. SWIMMER. I would have to say a Native American Indian is an individual who today is descended from a group of people that existed prior to the European contact with this country.

The CHAIRMAN. And applying that definition, and from what you know of the Lumbees, would you consider the Lumbees to be Native American Indians?

Mr. SWIMMER. Personally, I can't answer that. I really don't know. I don't know the history of the individual people. I think by observation I would say very definitely there are descendants who I would consider to be Indian people amongst those who are claiming Lumbee citizenship, certainly of some degree of blood, all the way up to perhaps full blood.

The CHAIRMAN. The fact that the State of North Carolina did, in 1885, recognize the Lumbee Tribe have any relevance in this situation?

Mr. SWIMMER. It certainly would carry some weight, but I am not sure what that weight would be as far as Branch of Acknowledgment. There are many, many groups of people who are recognized by States. In the State of Missouri there is a group of Cherokees that are known as the Cherokees of Missouri; they are very definitely some of the descendants of the Cherokee Tribe that existed at one time in Georgia and now is in North Carolina and Oklahoma. These people have no standing, however, as tribal member.

The CHAIRMAN. Then your testimony is that from your present knowledge you are not prepared to indicate that members of the Lumbee Tribe are Native American Indians. Is that correct?

Mr. SWIMMER. Not at all. I am perfectly willing to acknowledge them as Native American Indians. That's not the issue here. The issue is the recognition of a government— not just a group of people as native Americans, but a government. I don't think there's any doubt in anybody's mind that many of these people, if not all of them, have some Indian blood and some Indian ancestry. The question is, do they qualify as a government? And a government in the truest sense of it, with as many powers as any one of the State governments of the 50 States? An Indian tribe as a government today carries with it enormous power over its local citizens. You've read the reports, I am sure, in the area of civil rights, the duty of a tribe to its citizens, of the taxation powers, of the regulatory powers. It's quite different to say that an individual is a descendant of a native American and then to take the next jump and say that that entitles them to a governmental status.

The CHAIRMAN. Are members of the Lumbee tribe entitled to any benefits as Native American Indians?

Mr. SWIMMER. It depends on—under today's laws?

The CHAIRMAN. Yes.

Mr. SWIMMER. It depends on the particular Federal agency. Now, the Lumbees today do receive, I believe, grants in aid from different Federal agencies—I don't think it's necessarily as a matter of being an Indian tribe, but as a minority group. The Administration for Native Americans, I believe——

The CHAIRMAN. Can a member of the tribe go to an Indian Health Service clinic and receive medical treatment?

Mr. SWIMMER. Not unless they are able to prove a half degree or more, I believe. Now, I am not sure of their requirements. In the past Indian Health Service has had requirements that said "if you are identified as an Indian in the community," but I'm not sure if that required tribal membership or not. I really can't speak to that. I really don't know if any of the Lumbees are getting Indian Health benefits now or not.

The CHAIRMAN. Won't you agree that at the present time a person identifying himself as a Lumbee does not receive any benefits that other Indians receive in the United States?

Mr. SWIMMER. Yes, sir; they are not receiving benefits as a general rule that members of other tribes receive.

The CHAIRMAN. As Indians, should they be entitled to receive benefits?

Mr. SWIMMER. Not particularly, not just as Indians. Again, the situation is true across the Nation. We have members of tribes today who are not Indians who receive benefits, but it is because they are members of tribes, not because they are Indian or non-Indian. Citizenship in an Indian tribe is something that is very unique and very personal to the individual, and that by virtue of Federal law has enabled certain benefits to be bestowed on them, usually as a result of—or it has been at least alleged in the past that it's the result of—a treaty or a bargain that was struck in good faith between the Government and this Indian tribe, which we don't have here. Not just as an Indian do people receive benefits. Again, we have many Indian people across this country, perhaps half a million or more, who are Indian people but don't receive benefits because they are not members of a federally recognized tribe.

The CHAIRMAN. All right. Thank you very much, Mr. Secretary. If I may, I will be submitting questions of a technical nature for your response.

Mr. SWIMMER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much..

Our next witness is Mr. Lonnie Revels, Chairman of the North Carolina Commission of Indian Affairs of Raleigh, NC. Mr. Revels will be appearing on behalf of Governor James G. Martin and the State of North Carolina.

STATEMENT OF LONNIE REVELS, CHAIRMAN, NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS, RALEIGH, NC, ON BEHALF OF GOVERNOR JAMES G. MARTIN AND THE STATE OF NORTH CAROLINA, ACCOMPANIED BY ARLINDA LOCKLEAR, COUNSEL

Mr. REVELS. Good morning, Mr. Chairman.

Mr. Chairman and members of the committee, on behalf of Governor James G. Martin and the State of North Carolina, I am honored to have the opportunity to share with you the support of the State of North Carolina for the Lumbee Tribes in their effort to obtain recognition by the United States of America.

I am Lonnie Revels, and I serve as the Chairman of the North Carolina Commission of Indian Affairs. The Governor asked me to appear at this hearing to express to you our support for the Lumbee Tribe.

The North Carolina Commission of Indian Affairs is a State agency housed within the Department of Administration. It was created in 1971 and has a board of 24 members.

The State of North Carolina has, since 1885, recognized the Lumbee Tribe as a separate and viable Indian entity within Robeson County, North Carolina. The history of the Lumbee Tribe reflects their autonomous and separate character. Documents from

the time of early contact with European settlers indicate that the Lumbee Tribal members are Cheraw by descent. A Cheraw Indian community was located on Drowning Creek, which has been renamed and is currently known as the Lumber River. The Lumber River has been the site on which most of the Lumbee Indian community has been found in Robeson County. In 1933, an anthropologist named John Swanton concluded that the members of the Lumbee Tribe are descendants of the Cheraw Indians.

In 1911, the Lumbees had their name changed to the Indians of Robeson County. In 1953, the North Carolina Legislature changed it to Cherokee. On March 17th, 1988, at our board meeting, the Indian Commission went on record with the following resolution calling for support of the Lumbee Tribe's effort to gain Federal recognition. Governor Martin has also endorsed this effort.

The Lumbee Tribe petitioned the United States Department of the Interior for Federal acknowledgement in 1987. The filing of this petition is another in a series of efforts by the Lumbee Tribe to attain Federal recognition by the United States of America.

In 1956, the United States Congress passed the Lumbee Act. This bill acknowledged the Indian ancestry of the Lumbees and the continuous existence of the tribe since European contact. The legislative intent of the passage of this bill was to recognize the Lumbee Tribe, but in keeping with administrative policies in effect at that time, the Department of Interior urged that the bill be amended to name the tribe as Lumbee, but also sought to preclude services.

I think the question, Mr. Chairman, as we deliberate here today, is not the Lumbee Tribe's ongoing relationship with the Federal Government since 1988. My great-grandfather was one of the petitioners at that time. We have received services by the Bureau. Congress has studied us. They have been in the Lumbee community, in and out, through this 100 years. We contend that we have passed the scrutiny of the petition.

I think the issue here today is, is Congress willing to rectify the inequities, so that we can move forward? Or are we going to continue to draw this out, eight or nine years, as we've been told by the Bureau of Indian Affairs?

We, the State of North Carolina on behalf of the Governor, the Commission of Indian Affairs, humbly request your support of S. 2672.

Thank you.

[Prepared statement of Mr. Revels appears in appendix.]

The CHAIRMAN. Mr. Revels, how do you respond to Secretary Swimmer's contention that approval of this measure would be unfair to the hundreds of others who claim to be Indians who have subjected themselves to the acknowledgement process in the Department of the Interior?

Mr. REVELS. Mr. Chairman, we contend that this ongoing relationship for 100 years, the relationship with the Congress and with the BIA—we've had numerous studies with reference to our petition or to our overtures to the Congress and to the BIA. I understand if you had a group that has not had that contact, if it were unknown and they came before you today—I can understand where you would say, "Okay, we've got criteria here." But the very fact is that in 1956 the Congress recognized the Lumbee and this ongoing

relationship, and we've received services from BIA. They know about us. That is different from a tribe that organizes and comes knocking on the door and says, "We want to be recognized." It's altogether different. It's those two things, the relationship and the fact of the act of 1956.

The CHAIRMAN. Is the Lumbee Tribe, as a political unit, receiving any benefits from the Bureau of Indian Affairs at this time?

Mr. REVELS. I would have to yield to counsel. Mr. Chairman, this is Ms. Arlinda Locklear.

Ms. ARLINDA LOCKLEAR. The short answer to that question, Mr. Chairman, is no, not from the BIA, although the Lumbee Tribe does receive services from other Federal agencies by virtue of its status as a State-recognized tribe. There are a few individuals, seven, still surviving in our community who were certified as half or more Indian blood under the Indian Reorganization Act. Those individuals have received services from the BIA, primarily housing assistance, because of their status as half-bloods, under the IRA; however, the tribe itself has not received any services from the BIA.

The CHAIRMAN. So you have no formal relationship with the Bureau of Indian Affairs as a tribe?

Ms. ARLINDA LOCKLEAR. Not with the Bureau of Indian Affairs. We do have a formal relationship with other Federal agencies.

The CHAIRMAN. What agencies?

Ms. ARLINDA LOCKLEAR. For instance, we have received Title IV funding by virtue of being State-recognized. It is administered by our tribe. We receive energy assistance for low income people in our community because of our status as an Indian Tribe——

The CHAIRMAN. But this comes under minority legislation, doesn't it, as Indians?

Ms. ARLINDA LOCKLEAR. This goes specifically to Indian tribes, yes, sir. We have received assistance from JTPA which goes directly to Indian Tribes by virtue of our status as being State-recognized. Individual members of the community have also participated in scholarship programs that are available to Indians, administered by Indian Health Service. And finally, the General Counsel of Housing has indicated that the Lumbees are eligible as an Indian Tribe to receive assistance in Indian housing, as well.

Mr. REVELS. May I comment on that?

The CHAIRMAN. Sure.

Mr. REVELS. We—the North Carolina Commission of Indian Affairs—just concluded, in conjunction with what counsel referred to, 240 units in the Lumbee community. We had groundbreaking about two months ago.

Mr. Chairman, I would like to make one additional comment.

We serve in the leadership capacity for 99 percent of the Indian organizations throughout the country. In fact, Mr. Chairman, I will be leaving here to go to Nashville; I am a member of and a delegate to the Governors' Interstate Indian Council. Your Native Hawaiians are members of this, and I might want to comment that we appreciate the support of the Native Hawaiians in their efforts to obtain equality. But we have served on many, many boards to date. The only thing right now that is before us is this one issue.

The CHAIRMAN. All right. Thank you very much, sir.

We will now hear from a panel made up of Dr. Jack Campisi, a consultant to the Lumbee Petition for Federal Acknowledgement; Dr. Ray Fogelson, Professor, Department of Anthropology, University of Chicago; Dr. William Sturtevant, Curator of Anthropology, National Museum of Natural History and General Editor, Handbook of North American Indians of Smithsonian Institution; and Professor Vine DeLoria, Department of Political Science, University of Arizona, Tucson.

Gentlemen, welcome, and may I call upon Dr. Campisi?

STATEMENT OF JACK CAMPISI, CONSULTANT, LUMBEE PETITION FOR FEDERAL ACKNOWLEDGEMENT, RED HOOK, NY

Mr. CAMPISI. Thank you, Mr. CHAIRMAN. If it is permitted, I would like to use this map up here.

My main objective this morning is to summarize both the issue of the origins and the nature of the Lumbee community over time. I also would like to describe the problems and the nature of the evidence that we have to support the contention that the Lumbees are a tribe in the broadest sense.

I have mapped the borderline between North Carolina and South Carolina, being these rivers systems, as germane to the discussion. I have marked in green an approximate outline of Euro-American settlement through the 18th century.

As we moved into the 19th century, that line moved inward toward the Lumbee area, which is marked in red. This section was settled by Scotch-Irish and Germans, and they came down along the Appalachians. This section was settled by English and Scotch-Irish; they moved along the coastline and then inward. This section was settled by English and Welsh, who moved upward.

By the 1830's this area was confined in a circle around the Lumbee region, but the Lumbee area was never heavily settled by non-Indians, primarily because it is made up of a series of swamps, called Pocosins. The Lumbee population remained relatively untouched and undisturbed through the 18th century and the first third or more of the 19th century.

Thus, for two reasons we do not have much documented evidence—or perhaps for three reasons we don't have much documented evidence. First, the tribes in this area were decimated very early. Contact was in the 16th century. Secondly, the non-Indian population did not reach the area in any significant numbers until the 1830's. And third, the population that did bound the area before that were not English-speaking populations. They were Scotch, Welsh, German, and some Swiss.

The first reference to the Cheraw being in the area is from a map in 1725. It identifies the Cheraw and some other Siouan-speaking peoples along this Pee Dee River system.

In 1737, the Colony of South Carolina negotiated an agreement with the Cheraw Indians whereby the Cheraw Indians surrendered title to all their lands on both sides of the Pee Dee River, as far as Robeson County. That surrender was made by Robert, the Chief of the Cheraw, and 14 of his head men. They reserved two old fields, two former settlement areas, for their own use. One of those old fields we know to have been purchased by a James Adair, who was

a trader with the Catawba and Cherokee and also an historian of the times, and that locates it in the Lumbee area. So we know that they controlled land in that area.

In 1754, there is evidence of a community of Indians on Drowning Creek. In 1771 we get a contemporary newspaper article which identifies a community on Drowning Creek as being the Cheraw settlement. In 1773 we have a list of names of individuals in a settlement on Drowning Creek who are "railously assembled", for whatever that means, and those names are the names of present-day Lumbees. Some of the present-day Lumbees—in fact, almost all of the present-day Lumbees—can trace the line back to at least one family of the set, Locklear, from that list.

The 1790 census shows the rest of the Lumbee names, including Lowry, Oxendine, Locklear, Chavis, and so on.

So based on this evidence we are convinced that the best explanation of Lumbee ancestry is from the Cheraw and other Siouan people who joined them.

From 1830 on we get a flow of documents, an increase in documentation, but particularly after the Civil War. At the end of the Civil War, or in 1864, we have the Henry Berry Lowrie affair. Henry Berry Lowrie was a Lumbee leader whose father and brother were killed by the Home Guard at the end of the Civil War, and he led a 10-year uprising against the abuses of the local government. Henry Berry Lowrie is a culture hero to the tribe today, and there is an annual summer theater put on in his honor.

From 1885 on the Lumbees have been very active with Congressional actions, particularly in the area of education, and that tied to the area of tribal identification. There were at least seven attempts at legislation between 1885 and 1956 to get recognition and educational support. In every one of those attempts they are recognized as an Indian tribe and they are recognized as Indian people. The key question becomes economics.

Today there is a Lumbee community of some 30,000 individuals in Robeson County and the adjoining counties. They are a very tight-knit community. They are held together by ties of kinship, by religion, and by residency. Lumbees move away for economic reasons, but home is always Robeson County; that is a recurrent theme.

The second chart is an attempt to look at Lumbee leadership. It might be argued, what is the nature of Lumbee leadership? From our perspective, Lumbee leadership follows that one normally finds in tribes. It is kin-based and rises from key families, and they are linked together. This chart takes the names off the 1887 and 1888 petitions and plots the signers of the petitions against the family lines. They go back essentially to four core family lines. These are by generations, and you can see that in each generation there are successive signers. If you followed this to the contemporary times you would find that Lumbee leadership follows family lines. It is almost an inherited tradition that certain families will produce leaders over time. It is a decentralized, informal, kin-based leadership system.

Finally, the network of Lumbee families should be considered. Like many other tribes, Lumbee is key to kinship. To understand

the Lumbee social structure and political structure, one needs to analyze the kinship structure.

What I have here is one family, one progenitor, Limuel Hammonds, his children, his grandchildren, and his great-grandchildren. This line is contemporary. If you look at the charts carefully you will see three kinds of things occurring on the charts.

First of all, there is an inordinately high level of intermarriage between Lumbees, a preference for marrying into the tribe.

Second, individuals marry from different sections of the community. There are perhaps eight or ten major sections of the community, and individuals do not marry within their own section, like Fairmont or Pembroke, but there is a tendency to marry out of the sections.

Third, there is a tendency for families to group together in churches, but very often husbands and wives will go to different churches. What this presents—and this is the rest of the family, and I have only identified individuals living out of the household; I have not identified children within the household—what this presents is an image of a group of people who are linked by their family ties, who are linked by their religious beliefs, and who are linked by their residency patterns.

In addition, Lumbees are tied together by a sense of identity which comes through in things like the pageants, homecomings, and comes through in a newspaper called the Carolina Indian Voice, which deals primarily with Lumbee news and has been published commercially for 10 years or more.

The Lumbees have met, over the course of the last 100 years, crisis after crisis by relying upon this kin network system. They can gather 2,000 people at a meeting, and did in the early 1900's, through this kin network.

In summary, Mr. Chairman, I would say that I've worked on 18 petitions over the last decade, and this has been the best-documented petition I've had the privilege to work on. I did the field research on the family, on the community, and on the political system, and I wrote the narrative. It is my professional opinion that the Lumbees meet every criterion for Federal acknowledgement. There is no doubt in my mind.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Campisi appears in appendix.]

The CHAIRMAN. Of the 18 petitions that you assisted in filing, how many were successful?

Mr. CAMPISI. Well, let's see. I think Gay Head is the one we've gotten through. The rest are in the pipeline.

I worked on the Mashantucket petition but, as you know, that was a Congressional bill. I worked on the Narragansett, and that got through. I believe the rest are in some stage of completion.

The CHAIRMAN. And you are convinced that the case of the Lumbees is much more meritorious than others you have handled?

Mr. CAMPISI. Absolutely.

The CHAIRMAN. From your experience, if the Lumbees were required to go through the acknowledgement process, how long would it take, assuming that all the criteria were met?

Mr. CAMPISI. Well, we submitted the petition in December of 1987. We have yet to receive a letter of obvious deficiency. I pre-

sume we will not get one until late fall or early spring. At that point, the Lumbees will have to then generate funding to meet any objections that might be in there. Assuming prompt funding of those objections, I would then assume that we would not go on active status for 4 more years, based upon the petitions that are in front of us.

I would not expect, based upon other petitions that have been in longer and my informal conversations with the BIA, I would not expect to see this out of the chute before 8 years, without problems.

The CHAIRMAN. Thank you very much, sir.

Dr. Fogelson.

STATEMENT OF RAYMOND D. FOGELSON, PROFESSOR, DEPARTMENT OF ANTHROPOLOGY, UNIVERSITY OF CHICAGO, CHICAGO, IL

Mr. FOGELSON. Thank you, Senator Inouye. I've been asked to summarize my statement, but my statement is in writing.

I've had a long interest in the Lumbee that extends back at least 30 years from my field research among the Eastern Cherokee. As you probably know from previous testimony, for a period of time in the first half of the present century the Lumbees were referred to as the Cherokees of Robeson County. This piqued my curiosity to find out why. I read as much of the accessible documentation as I could and more or less came to an independent conclusion that they were descendants of various Eastern Siouan groups. I wasn't sure at the time which Eastern Siouan groups, but I was long convinced that there was something there.

My next major involvement with Lumbee issues came through the supervision of a doctoral dissertation at the University of Chicago by Karen Blu, who is now a professor at NYU. This involved very close supervision of her field work and resulted in a very fine, modern work on the Lumbee called The Lumbee Problem, published by Cambridge University Press.

In addition, I have worked generally for over 30 years on Southeastern Indian ethnological and ethnographic issues. I presently serve as the editor of the Smithsonian Handbook of North American Indians for the Southeast. I have also written the article on Southeastern Indians for the Encyclopedia Brittanica, and I presently serve as President of the American Society for Ethnohistory.

In summarizing my testimony let me start off by saying that I very strongly endorse S. 2672. A careful reading of the petition has convinced me that these indeed, as I suspected, are the remnants of Siouan-speaking peoples, primarily Cheraw. I think that's the primary identification. I think what the petition has done is to reveal important new documentation making that linkage. This is not to say that the Cheraw are the only component of the Indian admixture here; obviously there are other kinds of Indian groups as well, but Cheraw was dominant, and the evidence convinces me that that is how the people were referred to and referred to themselves at an early period.

Second, I think that the petition gives evidence of continuity of an entity as a tribe through this very close notion of community that Dr. Campisi has outlined, that there has been a consistent

system of leadership based on locality, based on kinship, based on religious affiliations, and the emergence of leaders when there were specific situational needs. I think this has been clear throughout Lumbee history.

Third, I would like to comment generally on an issue that has been circulating around and was brought up by Commissioner Swimmer again, and that has to do with the uniqueness and the specialness of the Lumbee case. Why shouldn't they go through the normal procedures like everybody else?

As has been said by others, this case has been dragging on for over 100 years. There have been ups and downs in this case. These drives for Federal recognition have on the one hand served periodically to unify the Lumbee people, to give them a kind of common cause. However, I think what is lost sight of is that the repeated failures to gain Federal recognition have left in their wake various kinds of internal bitterness and factional disputes. In other words, inaction—as I'm trying to express it here—is not neutral. It has social costs.

I think the time to act is now. In my reading-over of the petition, it follows the BIA guidelines, I think, very closely. This is not something that is being "slipped through." I think the preparation of the case has been very careful to meet all these strictures.

I wonder, in a sense, why the BIA wants to handle this case specially. There is a difference of scale here. We are talking about a group of approximately 40,000 people. The estimation of 8 years to go through this process is, I think, rather conservative. I think it's going to take a lot longer, just checking all the genealogies, all the rolls, and doing field work, I would hope, among the Lumbees would take a long time. We're not talking about a small rancheria of 200 California Indians; this is a much different matter. And I think it's more appropriate, perhaps, in the Congressional domain, given again some of the points that Commissioner Swimmer made this morning in terms of fiscal responsibilities that might ensue.

I have no fear of the Lumbees becoming wards of the Government. Lumbees, from my knowledge, will never become wards of anybody.

In my testimony before you in the Senate Oversight Committee last May, which you may recall, I commented on various weaknesses in the BIA guidelines. I'm not going to go over that ground now, but when I prepared that testimony, George Roth very considerately sent me a great deal of material which included the successful cases of two Southeastern Indian tribes, the Tunica and the Poarch Creek, which passed through this Federal recognition procedure. I am also familiar with the history of the closely-related Catawbas, closely related to the Lumbee people from all I can tell, who have also gained Federal recognition.

I concur with these positive decisions in these cases. They were well prepared, and I agree with them. However, I would say from my reading of the present petition that this present case before us is in terms of documentation as strong as, if not stronger than, any of the above cases.

So I conclude that failure to pass the bill now would be inconsistent with present Federal policy and with past decisions. I think, for reasons that I mentioned before, it would also perpetuate injustice

to the Lumbee people, and I urge the passage of S. 2672 here and now.

[Prepared statement of Mr. Fogelson appears in appendix.]

The CHAIRMAN. Thank you very much, Dr. Fogelson and Dr. Campisi.

How do you respond to Secretary Swimmer's contention that to provide legislative relief to the Lumbees would be unfair to those Indian Tribes who are now going through the acknowledgement process?

Mr. FOGELSON. Well, I'll take a crack at it.

I think most of the acknowledgement has already been made. If we look back at the 1956 legislation, the Lumbee were recognized for all but Federal funding.

I think this is a very special case. As I've said, all they've gone through, they've been studied, and I'm not sure in terms of the preparation of this case that the Bureau's Branch of Acknowledgement would come up with any different kinds of conclusions.

I respect their work, but I think also—something that hasn't been mentioned, although the case was submitted in 1987—I think the Lumbees were given at least four days when they would receive the obvious deficiencies and these were put off, from which I can only conclude that there are no obvious deficiencies, or maybe some of the Branch people are slow readers.

Mr. CAMPISI. Well, Mr. Chairman, I see the Lumbee case as considerably different than many of the others that I've worked on, and certainly many of the others that are coming before the Branch.

First of all we have a legal question here that has to be resolved, and that's the nature of the 1956 prohibition. If the Congress is going to be required to go through the operation of rescinding that law, it seems to me that it's logical that it should continue the operation and grant the rest of the recognition that it failed to grant in 1956. And I realize that 1956 was a time of termination and that probably weighed heavily on the Congress' passage of that initial act.

I agree with Dr. Fogelson, this has been a long time. There are a lot of people and a lot of social issues in Robeson County that are unresolved by virtue of the ambiguous status of the Lumbees. Five more years or eight more years or ten more years can only add to the hardship that these people have. I think that this is a special case.

The CHAIRMAN. Thank you, sir.

Mr. FOGELSON. Let me say also, as I reflect on this, that I certainly do not expect that this will be a precedent case that will open a floodgate for other cases that will come directly before Congress.

However, I think that the possibility that some cases may come before Congress should be recognized and should be appreciated. I think that the Congress is the appropriate domain in some of these cases.

The CHAIRMAN. Thank you.

Dr. Sturtevant.

STATEMENT OF WILLIAM STURTEVANT, CURATOR OF ANTHROPOLOGY, NATIONAL MUSEUM OF NATURAL HISTORY, AND GENERAL EDITOR, HANDBOOK OF NORTH AMERICAN INDIANS, SMITHSONIAN INSTITUTION, WASHINGTON, DC

Mr. STURTEVANT. Thank you. I believe you have before you a document that includes a more formal statement than I propose to make now.

I might start by briefly mentioning a few of the reasons why I think I may be qualified to speak to this issue.

I have been an anthropologist on the Smithsonian staff for a little over 30 years. In some sense, I am the successor of John Swanton, who looked at this issue in 1934. I am the General Editor of the Encyclopedic Handbook of North American Indians that the Smithsonian is publishing. I am a past president of the American Society for Ethnohistory of the American Anthropological Association and of the American Ethnological Society.

My personal specialty is the history and culture of Eastern North American Tribes, especially the Seminole and Iroquois, although I have also looked at a good many others, and in field work and in archival library historical research.

As for the Lumbee, I first became interested in them and learned something about them in 1961 when I attended, as an observer, a Southeastern Regional Conference, working toward the American Indian Chicago Conference of that year, that was hosted by the Lumbee in Pembroke, North Carolina. At that time there was a formal presentation of Lumbee society and history that was really a very intensive learning experience for me. Since then, I have followed the published and unpublished research by anthropologists and historians on the Lumbee.

Let me say that I think I can confirm Dr. Campisi's testimony on two grounds, his testimony and the massive petition that he wrote and edited. On the one hand, the conclusions of that study are consistent with what I knew about the Lumbee independently before he began his research. On the other hand, I can confirm his results on the basis of my knowledge of Dr. Campisi's other work, his scholarly reputation for accuracy and for unbiased integrity.

So I think that there is no question but that the Lumbee have the characteristics that identify an Indian Tribe. There is going to be, for example, a separate chapter on the Lumbee in the Handbook of North American Indians. It has been planned as such since the 1960's. Like every other Indian Tribe in North America, there will be a separate chapter.

Anthropologists over the last 100 years have agreed, everyone that has looked at the Lumbee case, that they are an Indian Tribe. No anthropologist that has looked at it has denied this. I think one could say that anthropologists, as a profession, view the Lumbees as an Indian Tribe.

The anthropological and historical questions raised about the Lumbee don't involve whether they are descended from aboriginal Indians; rather, they have involved just what Indians of the early historical period are components of their ancestry and which name is most appropriate for the tribe.

Dr. Campisi has convinced me that the Cheraw are in fact the most probably ancestors of the Lumbee in the 18th century. So Dr. Swanton said in 1934. Dr. Campisi has located additional documents that confirm that identification and provide more details. Almost surely, of course, there was also other Indian ancestry, but the significant Indian ancestry in the tribe is certain.

Very little is known about the Cheraw or about others that were in the area at the time of first European contact and for some 200 years later. The history of the area is unusually poorly documented for reasons that Dr. Campisi has summarized, so in fact very little is known or knowable about the details of the cultural and social changes and amalgamations that went on or must have gone on during those two centuries that resulted in the tribe that we can identify from the documents beginning about 1725. Said identifiable group is surely ancestral to the Lumbee. There is a good continuity of historical documentation from 1725 on.

I think one could say that the colonial origins of the Lumbee are not very different from those of some other southern tribes; for example, the Seminoles and the Catawba are both the results of a union of bands of different origins in colonial times. One difference from groups such as the Seminole and the Catawba is the lack of a distinctive name until quite recently for the Lumbee, but I'm sure this isn't really relevant to their identity as Indians, for they seem always to have referred to themselves as Indian and to have been recognized as Indian by their white and black neighbors. They have a significant amount of Indian ancestry. I believe no one has doubted that. They have been a distinct, bounded community ever since records began, surely since before the American Revolution.

The 10 or 15 distinctive family names among the Lumbee which are continually referred to in one context or another are good evidence of the continuity of the tribe, of its separateness, and as markets of tribal identity as which they clearly serve, they provide a kind of evidence of the kinship basis of the society which is, as you know, a particular characteristic of other Indian tribes and Indian tribes in general.

It was clear to me in 1961 that there were definite political leaders among the Lumbee. Dr. Campisi has shown that they have had such since the beginning of documented history and that they still do today. The lack of a formal, unified, structured political organization doesn't disqualify them as a tribe; many recognized tribes have had no more formal political organization than the Lumbee have had in the last 100 or 200 years.

It seems to me that they clearly do meet the criteria for Federal recognition and Federal acknowledgement. The documentation on them is far from marginal. It is massive and very impressive. That they are not Federally-recognized now is a mere historical accident. It seems to me that it is time for Congress to rectify that old injustice by formally recognizing them.

Thank you.

[Prepared statement of Mr. Sturtevant appears in appendix.]

The CHAIRMAN. Thank you, Dr. Sturtevant.

You have testified that the Lumbee will be accorded a separate chapter in your publication?

Mr. STURTEVANT. Yes.

The CHAIRMAN. When was this anthropological recognition granted the Lumbees?

Mr. STURTEVANT. You mean, when did we decide to give them a separate chapter?

The CHAIRMAN. Yes.

Mr. STURTEVANT. Oh, in 1969. I think that's correct.

The CHAIRMAN. Are there any other Federally unacknowledged or unrecognized tribes that have received this designation in your publication?

Mr. STURTEVANT. Probably. The Lumbee are the largest and most prominent exception. In most other cases we put—we have general chapters that cover several different groups.

The CHAIRMAN. That have not yet received Federal recognition?

Mr. STURTEVANT. Yes; that's correct.

I must say that this is a major article. The others are composite articles.

The CHAIRMAN. And as an anthropologist you are fully satisfied that the Lumbees would meet all the requirements of the acknowledgment process?

Mr. STURTEVANT. Yes; certainly.

The CHAIRMAN. All right. Thank you very much, sir.

May I now call on Professor DeLoria?

STATEMENT OF VINE DELORIA, DEPARTMENT OF POLITICAL SCIENCE, UNIVERSITY OF ARIZONA, TUCSON, AZ

Mr. DELORIA. Thank you, Senator Inouye. I submitted some written testimony, but I would like to give more or less an overview to counteract some of Mr. Swimmer's misapprehensions and misperceptions.

I think that if you look at Indian policy, it has been western oriented since the 1790's, when a coalition of Ottawa, Chippewa and Pottawottamie beat an American army in Ohio. As a result of that, Eastern Indians, or Indians living within the original 13 colonies, have generally not been recognized as Federal Indians, with the primary exception of the Iroquois.

Beginning after the Civil War there is the recognition that the United States really has responsibility to all Indian communities within its borders, so we begin to see acknowledgement of various tribes east of the Mississippi which, prior to the closing of the frontier, simply had not been recognized.

In the Indian Reorganization Act, the Bureau's policy quite frequently was to find attractive land and then try and convince Indians to move on it, offer them an election, and create them as an Indian tribe. This happened in Nevada, California, and some other places. Or they would locate an Indian tribe which did not have Federal recognition and try to find surplus or marginal lands for them, designate that as their reservation, then move them on.

So in the past the policy in the administrative branch of recognizing Indians has been a very loose and flexible policy. A substantial number of presently-recognized Federal Indian tribes have been recognized in this century, the majority of whom have been recognized through Congressional act——

The CHAIRMAN. May I get that? The majority have been recognized through the Congressional role?

Mr. DELORIA. Yes, sir; you can go back almost to the beginning of the century, and if you look in Kappler's books you will find these small statutes that are passed, recognizing various tribes. There is one case in which two Pueblos are put together as one tribe because they don't have enough people to actually support any kind of government.

But Federal policy changes, and in 1956 the Lumbees, in coming to Congress to get Federal recognition, ran afoul of the termination policy. The best they could do with that act is to get the Government to acknowledge that they were Federal Indians, but with the provision that they would not receive services. The termination policy was ill-conceived and has been repudiated, both by subsequent Congresses and subsequent Administrations, but the theory behind it was that Indians were a tremendous drain on the U.S. economy; and therefore, if you got Indians away from Federal services, this would balance the budget. This was before the days of $800 claw hammers for the Defense Department, when Indians were the big item.

So the 1956 act is an anomaly in Federal Indian legislation. Nothing like it had been done prior to that time and nothing like it since then.

The Commissioner—or Assistant Secretary, or whatever Mr. Swimmer is—says that there are hundreds of tribes waiting to be recognized by the Bureau. When I was with the National Congress of American Indians some years ago, I did my own survey, and I think I'm one of the people who originally raised the question of equal rights for Eastern Indians. I did not find nearly that many tribes that I would consider had a valid shot at this. I think that a lot of the petitions that they are receiving over there are from intertribal council groups; that is, miscellaneous groups of Indians who have formed Indian organizations and are now trying to seek some kind of Government approval.

If you would look at the Lumbee situation in terms of the numbers of Indians, the aggregate of the Indian population that needs to be recognized, I would estimate that the Lumbees represent 60 percent of the Indians seeking recognition.

Now, Mr. Swimmer said it's unfair for the Congress to consider the Lumbees and then not accord other tribes the same right of Congressional recognition. I think that it's basically unfair to ask any tribe to go to the Bureau of Indian Affairs for this acknowledgement, Senator. The reason is that the Bureau of Indian Affairs must stand in an adversarial role to that Indian community and force the Indian community to prove itself to the Bureau. The Bureau then would certify it as an Indian tribe and turn around and ask it to be in a trust relationship with it.

When I was much younger, I helped the Tiqua Indians of El Paso, the Nooksacks, and the Tonto Apaches to get Federal recognition. Two of those were Federal statutes and one was an administrative decision. We didn't have to prepare nearly the amount of material that the Bureau presently asks Indian tribes to provide. It was sufficient that we were able to bring the political leadership of

the tribe to the people in Congress, give a review of their history, and let the Congress make that decision.

I think the Bureau of Indian Affairs is using the Lumbees as leverage so that they can continue to hold a life or death situation over all of these Indian groups. If they say to the Lumbees: "We can't look at your petition for five years because we have 100 other tribes," that stalls the Lumbees. If the other tribes want to move in and get their recognition, they say, "We've got this big Lumbee case. It will take 10 years. You have to wait until afterwards."

What the present recognition policy does is, if there are 100 Indian groups seeking recognition, it forces each one of those Indian groups to spend years and years and years satisfying the most minute criteria, every year trying to raise money from foundations, churches, bake sales, in continual conflict with the Bureau of Indian Affairs over what constitutes an Indian, subject to personnel changes within the Bureau of Indian Affairs, having their elders in the community die before they can give testimony or before they can see their people come to some kind of Federal standing.

If you look at the criteria very closely, Senator, what the Bureau of Indian Affairs asks of an Indian tribe is that it have the same cultural and political profile as tribes already receiving Federal services. It is particularly evident in the question of whether a tribe has a constitution, whether a tribe has a definite method of establishing its membership.

Now, if you are to look at the Indian population at almost any point in American history you would find that the Indian political and cultural profile, the way Indians kept track of who is in their tribe, is more akin to the unorganized tribes, the tribes who are not presently recognized by the Bureau of Indian Affairs, than it is to presently-existing Federal Indian tribes. The reason you have membership lists is that you have rolls first for annuities, and then for allotments. No Indian tribe paid very much attention to its membership until the Federal Government said that it had to in order for the Government to estimate how efficient it would be in providing services. Consequently, a lot of the criteria the Bureau is asking for is to make the Indian tribe pretend that it has been receiving Federal services from the Bureau all along. With the exception of the Iroquois and maybe one or two other groups who had political organization described in creation or migration stories, there are no written constitutions by traditional Indian tribes. What they relied on were the family and kin, village, and clan networks.

The present acknowledgment situation that the Bureau is demanding Indian tribes who have not had a formal relationship with the United States to pretend as if they have the same profile as tribes who have been reprocessed by the Bureau, reorganized, given tribal governments that the Bureau wanted, so that the Bureau could deal with those people.

In view of all that, the best thing this committee can do is to immediately pass the Lumbee recognition bill, completely supersede the 1956 recognition act so that there is no question that they stand on parity with other tribes, and then promptly, having taken this big Lumbee problem out of the Bureau of Indian Affairs, begin

an intense supervision of the remaining cases of Federal recognition.

We are spending millions of dollars every year going through this game that the Bureau of Indian Affairs is playing over Federal recognition. It would be much better to get this whole thing over in a couple of years and get on with the job of helping these people order their lives and make some kind of comeback in American society.

So I urge you very strongly to convey to the committee that we've got to put the rocket boosters on the Lumbee bill, get this thing moved out, and then get Swimmer back over here and say, "Now, we've taken Lumbee away from you; now we want a progress report on where these other cases are going." That would be my recommendation.

Thank you, Senator.

[Prepared statement of Mr. DeLoria appears in appendix.]

The CHAIRMAN. Thank you very much, Professor DeLoria, and I thank all of you. Do you have any further statements you would like to make?

Mr. CAMPISI. Senator, I would like to put into public record a copy of the Lumbee petition, together with the maps and charts.

The CHAIRMAN. It will be received and made part of the committee files, sir.

Mr. CAMPISI. Thank you very much.

The CHAIRMAN. Thank you, sir.

[Lumbee petition, maps, and charts are retained in committee files.]

The CHAIRMAN. Our next panel consists of the Honorable Harold Deese, Chairman of the Lumbee Tribe of North Carolina, of Pembroke, NC; Dr. Adolph Dial, tribal leader, Lumbee Tribe of North Carolina; and these gentlemen will be accompanied by Ms. Arlinda Locklear, tribal attorney of Knoxville, MD, and Ms. Ruth Locklear, director, tribal enrollment office, Pembroke, NC.

Chairman Deese.

Ms. ARLINDA LOCKLEAR. Mr. Chairman, if I may, my name is Arlinda Locklear, attorney for the tribe, and also a member of the Lumbee Tribe. I would like to take the privilege of introducing the panel today so that the Chairman can understand who we have with us.

The CHAIRMAN. All right. Please proceed.

Ms. ARLINDA LOCKLEAR. Mr. Harold Deese is chairman of the Tribal Council that represents the Lumbee Tribe. By vote of the Lumbee people in 1984, a council was established for the specific purpose of pursuing Federal recognition in this latest effort; Mr. Deese is chairman of that council that was designated by the vote of the Lumbee people.

Next to him is seated Ruth Locklear. Ruth is the Director of the Lumbee Tribal Enrollment Office, which has been in the process of enrolling Lumbee people for the last 8 years as part of the enrollment process. Ruth has a prepared statement which describes in detail the membership criteria and the recognition process that we would like to make a part of the record.

Sitting next to me is Dr. Adolph Dial. Dr. Dial is Professor Emeritus of Pembroke State University, who established the Indian

Studies Department there. He and Ruth are enrolled members of the tribe. Mr. Dial is going to make a brief prepared statement for the committee today. In addition he has offered some prepared testimony, as well.

At the conclusion of Dr. Dial's remarks I would like to offer some additional responses to questions that have been raised, in particular in response to Mr. Swimmer's concerns.

If I may before we begin, just as a demonstration of the community's concern and interest in this case, I would like to ask the Chairman's indulgence to ask if all the members of the Lumbee Tribe who are in the audience would stand so that he can see who is here today.

[Lumbee Tribe members stand.]

Ms. ARLINDA LOCKLEAR. Thank you.

Dr. Dial.

STATEMENT OF ADOLPH DIAL, TRIBAL LEADER, LUMBEE TRIBE OF NORTH CAROLINA, PEMBROKE, NC, ACCOMPANIED BY ARLINDA LOCKLEAR, TRIBAL ATTORNEY, KNOXVILLE, MD; AND RUTH LOCKLEAR, DIRECTOR, TRIBAL ENROLLMENT OFFICE, PEMBROKE, NC

Mr. DIAL. Mr. Chairman, in 1888 Marcus Dial, along with other leaders of the Lumbee Tribe, signed a petition to Congress seeking Federal recognition and financial assistance for the Lumbee Indian Normal School. The State of North Carolina had established the school, but it was badly underfunded. This led Marcus Dial and others to seek Federal assistance.

My name is Adolph Dial. Marcus Dial was my grandfather. Today, 100 years later, I appear before you for the same purpose as my grandfather, to seek Federal recognition of our people.

The 1888 petition failed, mostly because the Department of the Interior said that Federal funds were too short to help our people. Between 1888 and today the Lumbee people sought recognition from Congress no less than seven times. Each time the Congress asked the Department of the Interior to study the tribe's issues. The Department did so no less than seven times. Each time, the Department found that we are an Indian community. Once, in 1932, the Department concluded that we are descended from the Cheraw Tribe, but each time the Department opposed a bill, mostly on the grounds of its cost.

In 1987, our people filed a fully-documented petition for Federal recognition under Federal regulations. Later—in this year, as a matter of fact—there have already appeared experts on Indian communities testifying about the strength of our petition, but the Department now tells us that it may be another 10 years before the processing of our petition is complete. At that point, the Department may say that it cannot recognize us because of the 1956 Lumbee Act.

The Department opposes this bill to recognize the Lumbee Tribe. They say that we should be studied once again to make sure that we are an Indian Tribe.

Enough is enough. Our people have been down this road with the Department of the Interior for 100 years now. They know we are

an Indian Tribe. Generations of our people have passed away, waiting for Federal recognition. We are determined that another generation shall not pass while we wait for Federal recognition.

We are a proud and a close people. We draw our strength from our line and from each other. Regardless of where a Lumbee may reside, home is always in Robeson County. All Lumbees know their family history at least three generations back, and with a little discussion any two Lumbees can connect themselves, either with kinship or with marriage.

These are the ties that have bound our people together, even in the absence of Federal recognition. But the time has come for the United States to acknowledge that the Lumbees are and have always been an Indian Tribe. One hundred years is long enough to wait.

[Prepared statement of Mr. Dial appears in appendix.]

The CHAIRMAN. Thank you, Dr. Dial.

Ms. Locklear.

STATEMENT OF ARLINDA LOCKLEAR, LUMBEE TRIBAL ATTORNEY, KNOXVILLE, MD

Ms. ARLINDA LOCKLEAR. I would like to add some additional comments as to the necessity for legislative recognition as compared to administrative recognition for the Lumbee Tribe.

Essentially, the position of the Department of the Interior is that it does not know who we are. We need to be processed by the Branch of Acknowledgement and Research so that the Department can determine that we are in fact an Indian Tribe and entitled to the status under Federal law as such.

It is our view first of all that even though Mr. Swimmer may not know who we are, in its institutional history the Department of the Interior knows quite well who the Lumbee people are. No less than three times in extensive detail—in 1890, in 1910, and again in 1934—the Department conducted a detailed examination of the history and origins of the Lumbee people. So in that institutional memory, the knowledge of us resides, and the factual ability to determine that we are an Indian Tribe is there.

Second, I think it's important to remember that what we are seeking has been done in the past by Congress because of the unusual situation that we have legally. You have heard repeated reference today to the Lumbee Act. The Lumbee Act causes considerable confusion at the Department of the Interior as to whether or not it has the legal ability to recognize our tribe. The Tigua Tribe of Texas was in a very similar situation. It had been subject to the 1968 act of Congress, where they were recognized and then recognition was taken away, very similar to the 1956 Lumbee Act. In 1987, Congress, because of that unique legal problem of the Tiguas of Texas, extended recognition to that tribe by legislation. So this has already been done for other tribes. We would not be establishing a precedent. We are only asking that Congress exercise the authority that it already has and that it has exercised in the past where there are unique circumstances that justify it. Those unique circumstances exist here.

Let me conclude by referring to what Dr. Fogelson said earlier about the social cost of failure to act. When I was in law school, my grandfather knew that I was interested in working on the recognition effort when I got out of law school, and he used to say to me, "Don't waste your time, child. When I was a young man I did it, 50 years ago, and the Federal Government is never going to accept us as Indian people." As the torch passed to our generation we took up the torch and began the work.

My predecessor as Tribal Attorney on this effort was Julian Pierce. Julian is no longer with us. We are determined that our generation will not pass away, like my grandfather's has, before we see this work done. We think 100 years is long enough. There is no more time for study. We think the time is now.

Thank you.

The CHAIRMAN. Thank you very much, Ms. Locklear.

Ms. Ruth Locklear, you are the Tribal Enrollment Office Director?

Ms. RUTH LOCKLEAR. That's correct.

The CHAIRMAN. How many persons are enrolled as members of the Lumbee Tribe?

Ms. RUTH LOCKLEAR. Mr. Chairman, as of August 5th we have 35,921 tribal members enrolled.

The CHAIRMAN. In order to be enrolled, what must one prove or demonstrate?

Ms. RUTH LOCKLEAR. You have to show descendancy from our tribal base lines going back to the Federal census, picking up in 1900 and 1910. Prior to then, we go back to the Croatan petitioners' list of 1888. These were 40-some of our people who petitioned 100 years ago. And you can show descendancy—you have to trace direct descendancy from these people, including the Croatan School Committee of 1900.

We also pick up the school attendance list of Mr. O.R. Sampson from about 1891 through 1896.

So basically, a person has to prove that he or she descends from these people who are identified on these documents.

The CHAIRMAN. In this process, does one have to produce documentary evidence?

Ms. RUTH LOCKLEAR. We have to look at birth certificates, death certificates, the census. It has to be clearly established that they are indeed descendants.

The CHAIRMAN. Then in order to be enrolled in the Lumbee Tribe, one must have some degree of Lumbee Indian blood?

Ms. RUTH LOCKLEAR. You must.

The CHAIRMAN. And you are satisfied that the evidence which is now available to you in your office is sufficient to meet the criteria set forth by the Bureau of Indian Affairs?

Ms. RUTH LOCKLEAR. Mr. Chairman, we are satisfied. In terms of the membership, every single person who is on our Lumbee tribal rolls has been clearly affirmed to be of direct lineal descendancy of our tribal base lines.

[Prepared statement of Ms. Ruth Locklear appears in appendix.]

The CHAIRMAN. Chairman Deese, is there a Lumbee language?

Mr. DEESE. The Lumbee language, it seems, was last spoken in the 1800's. As such, we have adopted a local language, English, and

have been speaking it since then. There have been studies done that have identified the meaning of words that we use that are indicative of a native language.

The CHAIRMAN. Your tribal organization is established pursuant to the recognition granted by the State of North Carolina?

Mr. DEESE. No. Our tribal organization is organized pursuant to a referendum of the people. The tribe has a private, non-profit corporation organized pursuant to those by-laws.

The CHAIRMAN. The State of North Carolina has recognized——

Mr. DEESE. The State of North Carolina does recognize us, but the——

The CHAIRMAN. As an Indian tribe?

Mr. DEESE. As an Indian tribe. But the referendum comes out of our own sovereignty, our right to organize and recognize ourselves.

The CHAIRMAN. And you were elected by the members of your tribe?

Mr. DEESE. Elected by representatives from the districts. We are elected from districts based on numbers of people residing in that district, and these people elected me.

The CHAIRMAN. Can you give this committee a brief description of the government structure?

Mr. DEESE. Fundamentally, the governing structure now is in the business of running service delivery programs. We do exercise tribal sovereignty in programs like the energy program, where we receive energy funds and directly disburse them to tribal members. We also do this with Job Training Partnership Act funds. We also do this with some other programs.

We have historically been operating schools, serving as school board members in the local Indian schools, until desegregation forced us to cease that.

The board does operate for-profit organizations or businesses for the tribe. We have two at this time. One is a day care program. The other is the radio station WYRU in Red Springs.

The CHAIRMAN. In addition to the Tribal Chairman, is there a Tribal Council?

Mr. DEESE. Yes.

The CHAIRMAN. And the members are elected by——

Mr. DEESE. Elected by the Indian people, members of the tribe who are 18 years old or older.

The CHAIRMAN. Do you have a judicial council?

Mr. DEESE. No, not as such at this time. We do serve some judicial functions in oversight of questions arising out of delivery of programs, such as the energy program. It is quasi-judicial in that people who feel that they have been denied services can appeal to us, and in that fashion I suppose you could say that we are quasi-judicial, but not fully judicial in the sense of criminal cases.

The CHAIRMAN. Do the tribal laws require members to pay taxes?

Mr. DEESE. Not at this time. Not to the tribal organization.

The CHAIRMAN. Did they at one time pay taxes?

Mr. DEESE. Not to my knowledge.

Ms. ARLINDA LOCKLEAR. If I may clarify very briefly the origins of the present governing body, as Dr. Campisi testified earlier, up until very modern times the Lumbee people functioned under informal leadership roles much as most Indian communities do, so

that leadership descended through certain core families and arose with the need for it. It was contextual in that sense, so the leaders arose out of those core families as the need for leadership arose.

It has only been in very modern times with the organization of the Lumbee Regional Development Association, which is a nonprofit organization under State law, that we have adopted a more formal kind of government. LRDA, as we call it, is the body that Chairman Deese referred to that administers the social programs that the tribe is eligible for.

In 1984, in the vote that Mr. Deese referred to, the Lumbee people designated the Board of Directors of the LRDA Corporation as our interim Tribal Council for purposes of the Federal recognition process. It is important to note that that board is, as he observed, very representative of our people. The LRDA Board is elected by districts among our people. There are 15 districts which have a representation of at least 2,000 Lumbees within each which elects that one person who serves on the Board. There are three at-large members as well who represent Lumbee interests who are not located within Robeson County and adjoining counties. Those individual Board members then elect their Chairman, who is Mr. Deese.

The CHAIRMAN. Ms. Ruth Locklear, how many of the 35,000- plus members live in Robeson County and adjoining counties?

Ms. RUTH LOCKLEAR. We have estimated approximately 90 percent.

The CHAIRMAN. About 90 percent?

Ms. RUTH LOCKLEAR. Yes; 90 percent.

Mr. DEESE. In the area, sir, it's quite possible to go 15 or 20 or 25 miles and not pass a single residence of non- Indian people. That's the way our density is.

The CHAIRMAN. Do you have any property owned by the tribe?

Mr. DEESE. We have a small parcel.

The Chairman. All right. Thank you very much, all of you. I appreciate it. It has been most helpful.

Mr. DEESE. Thank you for your kindness.

The CHAIRMAN. Our final panel consists of the Executive Director of the National Congress of American Indians, Ms. Suzan Harjo, and the Principal Chief of the Eastern Band of the Eastern Band of Cherokee Indians, the Honorable Jonathan Taylor.

Ms. Harjo, welcome.

STATEMENT OF SUZAN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Ms. HARJO. Mr. Chairman, thank you for having this hearing.

The Lumbee Tribe has once again come to the attention of Congress and the rest of the world very suddenly this year with the tragic events that resulted in the political assassination of Julian Pierce. What we have been reminded of is that the situation is not getting any better, of the social and educational needs and the severe problems of racial discrimination, especially in the justice system and the way justice is meted out in North Carolina regarding the Lumbee Tribe and other Indian people.

The Lumbee Tribe has been recognized widely as a tribe for many, many years, has petitioned for over a century for Congress to recognize it, and their efforts have been stalled by the Bureau of

Indian Affairs' process, the federal acknowledgment process, which has now become a project of the Bureau of Indian Affairs that is in danger of usurping Congressional responsibilities regarding recognition of Indian Tribes. Only Congress can recognize Indian Tribes; that is why the federal acknowledgment project is not called the Federal recognition project. And the Executive, which does not have the authority to recognize Indian tribes and to establish a relationship with Indian tribes, has attempted in recent years to exclude Congress from that process.

No one has presented any compelling evidence to refute the expert witnesses and the Lumbee people themselves in their assertion that they could go through the federal acknowledgment project and be successfully acknowledged.

We believe that it is time for the Lumbee Tribe to be federally recognized. Congress has many ways of establishing relationships with Indian tribes, just as it has many ways of granting foreign aid, for example. The Lumbee people have humbled themselves far too many times before Congress not to be heard now, at long last, and I have no doubt that the broad membership of the National Congress of American Indians will fully support the Lumbee Tribe in their particular effort right now to gain federal recognition, which is not something that they sought in the way of legislation but something that was brought up by their Members of Congress in response to the events earlier this year and as a response to their long history of trying to go through the various processes to be included in the broader community of Indian nations, as well they should.

The Lumbee Tribe is a member of the National Congress of American Indians, and I am here supporting them in their internal prerogative to establish what relations they will with the United States. This is a worthy effort, and I urge this committee to take expeditious action and to right a very long and wrong injustice that has been foist on the Lumbee people. I think that fair-minded people everywhere will support this effort, as long as we don't get bogged down in the Bureau of Indian Affairs' game of trying to control all processes dealing with Indian people.

Thank you.

The CHAIRMAN. I have no doubt that the Congress of the United States, working in concert with the Executive Branch, is Constitutionally empowered to grant recognition to Indian Tribes. However, it would appear that under the present scheme this call for recognition has been delegated to the Bureau of Indian Affairs.

Do you believe that the Congress, working with the President, is better equipped to provide this grant of recognition than the Bureau of Indian Affairs?

Ms. HARJO. The Bureau of Indian Affairs has assumed responsibility for acknowledging, and has assumed that it has been delegated powers by Congress. In this instance, Congress has delegated no powers to the Bureau of Indian Affairs. The federal acknowledgment process was established internally by the Interior Department when the Interior Department, and primarily the Bureau of Indian Affairs, in the early 1970's, began to feel that it was losing the battle of controlling who was an Indian. They had terms for this: How do we want to make Indian tribes? Do we want them

Stillaguamishized? Do we want them Passamaquoddyized? And they would say that because they had excluded, for example, the Passamaquoddy Tribe of Maine from any services. When they said that to a court, the Federal District Judge in Passamaquoddy v. Morton reminded the Bureau of Indian Affairs very sharply that it could not exclude the Passamaquoddy Tribe, that it had taken wrong actions to exclude them from federal recognition, and that they were in fact a recognized tribe and did have a duty owed them by the Bureau of Indian Affairs.

There has been no delegation by Congress to set up this process. There has been funding for it. The process has not moved very well; it has not moved quickly; there are many tribes, as you have heard in previous hearings, who will have to wait well into the next century for their petitions to be acted upon. This is not the best project that could be, and I think it would take a considerable reshaping to make it even a good process within the Bureau of Indian Affairs. Even during the life of the federal acknowledgment process, the Congress has exercised its prerogative to recognize many Indian tribes, some in this Congress.

The CHAIRMAN. Your description may be correct, but the fact that the Congress appropriates monies to the Bureau to carry out this assumption of function and the fact that the Congress to this day has not objected to this assumption of authority by the Bureau—and to my recollection the courts, to this date, have upheld this assumption of authority—would, I believe, grant this authority to the Bureau.

My question was, who do you think is better equipped, the Congress or the BIA, to do this job?

Ms. HARJO. I think the Congress is better equipped because the Bureau of Indian Affairs is still operating under an internal atmosphere, an internally-generated atmosphere, that is left over from conflicting congressional mandates over this century, to get out of the Indian business. And I think the Bureau of Indian Affairs has a basic resistance to any other Indian tribes or Indian people being recognized as Indians for federal services, particularly in this Administration where there is an effort to cut back on services for Indian people. It has been viewed as a dollars and cents matter, and there has been a resistance to federally-acknowledging other Indian tribes because of the money.

The CHAIRMAN. And this morning you appear as the Executive Director of the National Congress of American Indians, speaking on behalf of the organization?

Ms. HARJO. I appear as Executive Director, speaking on behalf of the organization in support of the Lumbee Tribe, which is a member of our organization, and pending a resolution that I believe will be supportive of their particular position today.

The CHAIRMAN. Thank you very much.

Now may I call on Chief Taylor?

STATEMENT OF JONATHAN L. TAYLOR, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS, CHEROKEE, NC, ACCOMPANIED BY GEORGE WATERS, WASHINGTON, DC, REPRESENTATIVE

Mr. TAYLOR. Mr. Chairman, my name is Chief Jonathan Taylor. With me today is George Waters, an employee of the tribe who is located here in Washington, DC.

First of all, I would like to thank the Chairman for allowing me to come up and share some of the tribal views with this honorable committee. We have throughout the years enjoyed the government-to-government working relationship, both with the Congress and with the Senate, and with both of the committees.

Mr. Chairman, we are not here today saying that we are opposed to any group or any tribe that is seeking recognition. But as brought out earlier by the Chairman, in March of 1978 we had a meeting in Nashville, Tennessee, the NCAI and also State-recognized tribes. We had a joint meeting there, and that was one of the big issues: how do we determine what tribes are going to be recognized? I think it was the Indian leadership themselves that came up with the criteria that the Bureau—Congress said, "We're going to have to come up with something." The Indian leadership also said that we need some mechanism, Mr. Chairman, to determine who is going to be recognized and who is not going to be recognized.

If you would read my testimony, Mr. Chairman, which I would like to be made a part of the record, I, too, am a member of NCAI in long standing. I served four different terms as Vice President of that organization, area vice president. I also served as president of the United South and Eastern Tribes—that's the tribes east of the Mississippi, Mr. Chairman, and includes Federally-recognized tribes. We passed a resolution up here this year, Mr. Chairman, that primarily says the same thing that the Eastern Bands resolution says, that we will support any tribe or any group seeking recognition as long as they go through the process and meet the criteria.

I know it's a long and drawn-out thing. I think if Congress wants to speed up the process, that they should put more money and more staff people into this program to get more of the job done. I think people have waited a long time. In our tribe in North Carolina, we've had a working relationship with the government for years; but everything we try to do, Mr. Chairman, it's a long, drawn-out process. I spend as much of or more of my time here in Washington as I do on the reservation. Every time we turn around there's a different thing involved, not only for non-recognized tribes but for Federally-recognized tribes, especially the budget process. Every year we have to come after the budget has been signed off, asking both the House and the Senate Appropriations Committees for additional funding so that we can go through the year.

Sure, I guess at times we've felt that the Bureau wants to get out of the Indian business. But when they passed Public Law 638, that's the contracting act, there were a lot of the tribes that jumped on that too, Mr. Chairman, saying that they wanted to con-

tract and run their own affairs. That was a bill issued in the wisdom of the Congress, and I think it was ratified by the Senate, of passing this contracting bill where the tribes could do that and contract even faster. Under the old Buy Indian act you could only contract for one year at a time. So they came up with a mechanism where now tribes can contract under Public Law 638 3 years at a time with longer contracts, where tribes can run their own businesses if they want to.

Our tribe has never chosen to do this. Our school is a BIA school, which we have some problems with, but I think that's one of the trust responsibilities of the Federal Government. We have 43 of these with the Government right now, and I think every one of them has been broken at some time or another.

But like I said at the beginning, nothing good comes easy, and it takes a long time to get it. Some of the elderly people of our tribe still talk about fighting in World War I and World War II, and yet they didn't even have a right to vote once they got back home. I think for all of us, every Indian tribe—and not only Indian tribes either, Mr. Chairman, but other people throughout this country—funding is one of the—like I was up here several weeks ago testifying before the Senate Appropriations Committee and the House Appropriations Committee. I asked them for funding just to get us through this year in contract medical care at our hospital. They told us at that point, "We have no more money." BIA is the same way. We had to drop 14 aides out of our elementary school who were badly needed to educate our kids.

The only way out for not only the Indian people but for all races of people is through education. We can't even get adequate funding to educate our children down in North Carolina.

This is not anything that Jonathan Taylor says, Mr. Chairman; this is proven fact. It has come through both Appropriations Committees. Every year we get cut back in education, health programs, housing, you name it. When they start cutting, it seems that we feel it first. I guess it's just because we're smaller groups.

I checked with the Bureau and as of July 1988, there are 112 petitions in for recognition. Eleven of those petitions, Mr. Chairman, are in North Carolina. Some of those petitions are even to be Cherokees of North Carolina. I'll tell this committee that there are only two Cherokee Tribes; one of them is in North Carolina and the other one is in Oklahoma, even though we have separate government, separate officers, separate chiefs. Those are the two tribes, the Western Band of Cherokees and the Eastern Band of Cherokees in North Carolina.

Suzan said that she felt that it would be easier for Congress to handle this. If they're going to do it that way, Mr. Chairman, I would urge this committee as I did the committee yesterday: if you're going to do it, come up with some mechanism so that you don't pull one group out of the 112 and say, "We're going to act on this," but come up with a mechanism where Congress can handle it all.

I think if the Bureau had its druthers, they wouldn't want to fool with these. But I think that's a trust responsibility that they have to handle as long as they stay in business, and it's on their back to

handle. I think that if people meet the criteria and go through the process, they should be recognized.

Also, it says that "additional funding will be made available" just for the Lumbee people. If they are Federally recognized, if they be made a Federally-recognized tribe, then I think they should go through the same budget process that my tribe has to go through. We have to go through it every year. We don't get to set up our own budget. It's set up by BIA and also the Indian Health Service.

Right now, Mr. Chairman, we've built a new hospital at Cherokee. We didn't get that through the regular budgeting process. We had to come here to the Senate Appropriations Committee and to the House to get an add-on to our budget to where we could build that hospital. It had a staffing pattern which was come up with by Indian Health Service themselves, yet we've got 15 less positions that had always been there. The funding is not there. Whichever way you do it, Mr. Chairman, or the Congress elects to do it, I hope that the uniform effort of everybody that is seeking recognition will be treated the same way, will go through the same process and be treated the same.

Thank you, Mr. Chairman, for allowing me to come up here and to let the committee know some of the feelings of the Tribal Council of the Eastern Band of Cherokee Indians. Thank you for letting me come.

[Prepared statement of Mr. Taylor appears in appendix.]

The CHAIRMAN. Thank you, sir.

Listening to your testimony, I would gather that the thrust of your testimony is that if your tribe had all the money that you wanted, you would not be objecting to this bill?

Mr. TAYLOR. No, sir, that's not the truth. And believe me, if I had known in time, Mr. Chairman, that these hearings were being held, I would also have had a rooting section back there in this building from the Cherokees, but I was not even notified by either this committee or the House committee that these hearings were even going to be held. I found out by our man who is working here in Washington that they were going to hold hearings, and the two committees were good enough to allow me to be put on the witness panel.

I would still say, even if we had more money than we could use, if there's as process set up that you go through, then go through it. If it doesn't work, then like Suzan said, it's in the hands of Congress that they can change that process to make it uniform so that it treats every tribe and group the same way. Don't single out my tribe. Don't single out any tribe or group and say, "We're going to handle this one different."

Thank you, Mr. Chairman.

The CHAIRMAN. Historically, most of the tribes received their recognition through the Congress and not through the Bureau of Indian Affairs. In the case of the Lumbees, our committee records would indicate that in 1956 the Congress of the United States to provide full recognition to the Lumbees, but just on the eve of final passage when they were advised that full recognition would cost too much, the bill was amended so that the Lumbees received recognition as an Indian Tribe with no benefits. It would appear that

by this measure the Lumbees are requesting that the process be completed by providing the benefits of tribal recognition.

Would my interpretation of the process be wrong, sir?

Mr. TAYLOR. You know more about your process than I do, Mr. Chairman. I think the process has been set down; I think it has been abided by by other groups, and I think that if Congress wants to change it, then change it for everybody. Everybody has suffered, Mr. Chairman. From 1838 to 1839, our people were moved from North Carolina to Oklahoma. Through the summer's dust and the ice and cold of that winter, over 5,000 of them died and were buried in nameless graves from North Carolina to Oklahoma. Yes, we've all suffered, but we went through the danged process and I think it ought to be abided by. If Congress thinks it's no good, then change it. It's in your hands. And if you do it, we've never argued—we might not agree with some of the things that Congress and the Congressional people do, but if it's acted on and put into law, we don't oppose it because you people are sent up here to look after not only the Indian people but all of the other people in the United States. You'll not go to Cherokee and see them opposing anything. If you see fit to do something, Mr. Chairman, and in your heart you think it's right, the Eastern Band of Cherokees will be supporting you.

The CHAIRMAN. You don't think that this poses a unique situation where an Indian Tribe received recognition by the Congress but was denied benefits of such recognition?

Mr. TAYLOR. Mr. Chairman, in 1956 I was just then going into high school. I don't know what was done then. I've read a little bit about it. Not being an attorney, I don't understand some of the things that happened. If you will see, it's in my testimony just exactly what happened. I know that in 1974 there were some things that happened. But somewhere down the line I think this process, Mr. Chairman, is on your shoulders. And when you come out with it, I hope that you'll look this whole thing over and come up with something that will let you go to bed at night and sleep, and something that we can also live with.

The CHAIRMAN. I can assure you that this committee will study this measure very carefully. If we do make a decision it will be one we can sleep with, sir.

Mr. TAYLOR. Thank you, Mr. Chairman. If you're ever down in Cherokee, Mr. Chairman, come by and see us and you'll see that the Cherokees are not sitting still, that we're trying to do it by ourselves.

The CHAIRMAN. I look forward to doing that, sir. During this recess I will be in Alaska visiting your brothers and sisters in the north, and after that I hope I may have the time to visit the Cherokees.

Mr. TAYLOR. If you've got room on the plane, I'm always available to go to Alaska at any time. [Laughter.]

Thank you, Mr. Chairman, and this honorable committee.

The CHAIRMAN. Without objection, the statement of the Red Lake Band of Chippewa Indians, submitted by Chairman Roger Jourdain, will be made part of the record at this point.

[Letter from the Red Lake Band of Indians appears in appendix.]

The CHAIRMAN. The committee record will be kept open until September 6. Those of you who wish to submit additional statements may do so until September 6th.

With that, the hearing is adjourned.

[Whereupon, at 11:38 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

TESTIMONY OF SENATOR TERRY SANFORD

"LUMBEE RECOGNITION ACT"

FRIDAY, AUGUST 12, 1988

MR. CHAIRMAN, 100 YEARS AGO THE TRIBAL LEADERS IN SOUTHEASTERN NORTH CAROLINA ASKED CONGRESS TO FORMALLY ACKNOWLEDGE THEIR SPECIAL HERITAGE AS NATIVE AMERICANS. ON THIS, THE CENTENNIAL OF THAT FIRST REQUEST, IT IS WITH GREAT ENTHUSIASM THAT I SUPPORT THE "LUMBEE RECOGNITION ACT," WHICH IF PASSED WILL ENSURE THE CULTURAL INTEGRITY OF THE LUMBEE TRIBE BY ALLOWING THEM THE ABILITY TO CONTROL THEIR OWN FUTURE AND THEIR OWN WELFARE.

LAST DECEMBER, THE LUMBEE INDIANS CAME TO WASHINGTON AND FILED A FULLY DOCUMENTED PETITION FOR FEDERAL ACKNOWLEDGEMENT WITH THE BUREAU OF INDIAN AFFAIRS. HOWEVER, I FEEL IT NECESSARY TO CIRCUMVENT THE USUAL RECOGNITION PROCESS FOR SEVERAL REASONS:

FIRST, DUE TO THE BACKLOG OF PETITIONS AT BIA, RECOGNITION OF THE LUMBEE PETITION COULD BE UP

TO TEN YEARS AWAY. SUCH A DELAY MAKES IT UNLIKELY THAT TRIBAL MEMBERS WHOSE EXPERTISE WAS SO VITAL TO THE COMPLETION OF THE PETITION WILL BE AVAILABLE FOR CONSULTATION WHEN THE BIA BEGINS ITS CONSIDERATION;

SECOND, THE EXTRAORDINARY ADMINISTRATIVE BURDEN AND COST OF PROCESSING THE LUMBEE PETITION CAN BE AVOIDED;

AND LASTLY, THE STRONG POSSIBILITY THAT THE LUMBEE TRIBE MAY FALL OUTSIDE THE SCOPE OF THE ADMINISTRATIVE PROCESS DUE TO THE 1956 LUMBEE ACT.

IN DRAFTING THIS LEGISLATION, I HAVE KEPT IN MIND BOTH BUDGETARY RESTRAINTS AND THE IMMEDIATE NEEDS OF OTHER FEDERALLY RECOGNIZED TRIBES. "THE LUMBEE RECOGNITION ACT" APPROPRIATES NO NEW MONEY AND PROVIDES THAT THE LUMBEE INDIANS WILL RECEIVE BIA SERVICES ONLY AFTER CONGRESS HAS APPROPRIATED THE NECESSARY FUNDS.

IN CLOSING, MR. CHAIRMAN, I WOULD LIKE TO GIVE SPECIAL RECOGNITION TO CONGRESSMAN CHARLIE ROSE OF NORTH CAROLINA, WHO HAS INTRODUCED THIS LEGISLATION IN THE HOUSE AND TESTIFIED BEFORE THE HOUSE INDIAN AFFAIRS COMMITTEE YESTERDAY. I WOULD ALSO LIKE TO RECOGNIZE DR. ADOLPH DIAL, TRIBAL SPOKESPERSON; MR. HAROLD DEESE, TRIBAL CHAIR; DR. JACK CAMPISI, CONSULTANT FOR THE LUMBEE PETITION; DR. WILLIAM

STURTEVANT, EDITOR OF THE HANDBOOK OF THE NORTH AMERICAN INDIANS; DR. RAY FOGELSON, PRESIDENT, AMERICAN ETHNOHISTORY ASSOCIATION; SUSAN HARJO, EXECUTIVE DIRECTOR OF N.C.A.I.; AND ALL OF THE MANY OTHER SUPPORTERS OF THIS LEGISLATION.

THANK YOU, MR. CHAIRMAN, I TAKE PRIDE IN PLAYING A SMALL ROLE IN TRYING TO ACCORD THE LUMBEES THE RECOGNITION THAT HAS LONG BEEN THEIR DUE.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U. S. SENATE, ON S. 2672, A BILL "TO PROVIDE FEDERAL RECOGNITION FOR THE LUMBEE TRIBE OF NORTH CAROLINA."

August 12, 1988

Good morning Mr. Chairman and members of the Committee. I am pleased to present the views of the Department of the Interior on S. 2672, the "Lumbee Recognition Act".

We are at a minimum strongly opposed to enactment of S. 2672. Moreover, the Administration, after further consideration, intends to provide a more detailed and definitive report on the bill.

The bill would provide Federal recognition to the Lumbee Tribe of North Carolina. However, we have not determined that the group meets the requirements for Federal acknowledgment as a tribe under 25 CFR Part 83 (copy attached). Federal acknowledgment establishes a perpetual government-to-government relationship between the tribe and the United States, and has considerable social and economic impact on the petitioning group, its neighbors, and Federal, state, and local governments. Federal recognition would make this group eligible for services and benefits offered by the Bureau of Indian Affairs and the Indian Health Service as well as economic development assistance from other Federal agencies. If services are provided to this group, at the same per capita cost as services currently provided to members of of recognized Indian tribes, the total annual impact on Federal spending could exceed $100 million per year. Because of the significance of acknowledgment, the process reflected in 25 CFR Part 83 should be adhered to as it is necessarily deliberate, detailed, and thorough.

We also note that the jurisdictional provisions in section 6(a) of the bill do not reflect the fact that the Lumbee Indian are, and always have been,

subject to the jurisdiction of the State of North Carolina and its political subdivisions. Unlike tribes which exercise some tribal jurisdiction over reservation land, the Lumbee Indians do not have a reservation or trust land over which to exercise such authority. The provision in section 6(a) of the bill should be contrasted with the more appropriate provision relating to the Wampanoag Tribe in 25 U.S.C. 1771g.

The Lumbee Petition

The Lumbee Regional Development Association, Inc. submitted its initial undocumented letter petition on January 4, 1980. A documented petition was received on December 17, 1987 and supplements were received on the February 4 and 22, 1988. The Lumbee petitioner is one of 12 petitioners from North Carolina, including 5 from groups in Robeson and adjoining counties where the Lumbee group is located. The 5 are the Hatteras Tuscarora, Drowning Creek Tuscarora, Cherokees of Hoke County, Cherokees of Robeson County, and Tuscarora Nation of North Carolina.

The Lumbee petition consists of a two volume narrative report, 1½ file boxes of documentary exhibits, and a copy of the 16 volume membership roll. Because of the size of the enrollment (37,000+), the backup data for the roll (i.e., the genealogical portion of the petition) was not submitted, by mutual agreement. It would be reviewed during a field trip.

Because of staff commitments to work on other pending petitions, we have not given more than a cursory review of the Lumbee petition. The normal obvious deficiencies review under our regulations would probably not begin until about March 1, 1989. It would take about two to three months including time for review of the genealogical portion. Assuming that the Lumbees responded by the end of 1989 to any deficiencies found in our review, active consideration of the petition could not be expected to begin before the fall

of 1991 at the earliest. Once under active consideration, it usually takes some 24 months to complete all stages and a final determination to become effective or, in this case, until the fall of 1993. A more expedited review would require placing the Lumbee petition ahead of other petitions, which we view as unfair to other petitioning groups.

Our very brief review of the petition suggests that there are questions that need to be raised with the petitioning group and its researchers. Some questions relate to the interpretation or completeness of documentation supporting the group's early history. There are other questions regarding the completeness of the membership roll and the possible future status of other petitioners in or near Robeson County who may be part of the Lumbee group. These are questions which are normally raised, thoroughly explored, and often answered satisfactorily through our preliminary review procedure.

The 1956 Lumbee Act

Once before the Congress has considered the status of the Indians of Robeson and adjacent counties in North Carolina. It should be noted that the resulting act avoided describing them as a tribe. The Act of June 7, 1956 (70 Stat. 254) (after four "Whereas" clauses) provides:

> "That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect

Indians because of their status as Indians shall be applicable to the Lumbee Indians." [Emphasis supplied.]

The 1975 decision of the U.S. Court of Appeals for the D.C. Circuit in Maynor v. Morton (510 F2d 1254) and a 1979 decision of the Comptroller General (58 Comp. Gen. 699) would seem to indicate that the 1956 Act is not a bar to action as to any of the six petitioners in Robeson and adjacent counties under 25 CFR Part 83, although that specific issue was not mentioned in either decision. However, a legislative statement to that effect would remove any doubt and we recommend that such a statement be enacted.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.

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AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9; and 230 DM 1 and 2.

SOURCE: 43 FR 39361, Sept. 5, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 83.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Area Office" means the Bureau of Indian Affairs Area Office.

(f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.

(g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

(h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgement that it is an Indian tribe.

(i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the con-

text of the Indian culture and social organization of that tribe.

(j) "Member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

(l) "Historically", "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.

(n) "Indigenous" means native to the continental United States in that at least part of the tribe's aboriginal range extended into what is now the continental United States.

(o) "Community" or "specific area" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(p) "Other party" means any person or organization, other than the petitioner who submits comments or evidence in support of or in opposition to a petition.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs.

(c) This part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times; provided that a group which meets the criteria in § 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department, unless it can be clearly established that the group has functioned throughout history until the present as an autonomous Indian tribal entity.

(e) Further, this part does not apply to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

§ 83.4 Who may file.

Any Indian group in the continental United States which believes it should be acknowledged as an Indian tribe, and can satisfy the criteria in § 83.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

§ 83.5 Where to file.

A petition requesting the acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245. Attention: Federal acknowledgment project.

§ 83.6 Duties of the Department.

(a) The Department shall assume the responsibility to contact, within a twelve-month period following the enactment of these regulations, all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department. Included specifically shall be those listed in chapter 11 of the American Indian Policy Review Commission final report, volume one, May 17, 1977. The Department shall in- form all such groups of the opportunity to petition for an acknowledgment of tribal existence by the Federal Government.

(b) The Secretary shall publish in the FEDERAL REGISTER within 90 days after effective date of these regulations, a list of all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs. Such list shall be updated and published annually in the FEDERAL REGISTER.

(c) Within 90 days after the effective date of the final regulations, the Secretary will have available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research for required information. The Department's example of petition format, while preferable, shall not preclude the use of any other format.

(d) The Department shall, upon request, provide suggestions and advice to researchers representing a petitioner for their research into the petitioner's historical background and Indian identity. The Department shall not be responsible for the actual research on behalf of the petitioner.

§ 83.7 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a) through (g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantially continuous Indian identity shall include one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian;

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations.

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present.

(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group;

(3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity;

(4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity;

(5) Other records or evidence identifying the person as a member of the petitioning entity.

(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

§ 83.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the FEDERAL REGISTER a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entity submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined.

(b) Groups with petitions on file with the Bureau on the effective date of these regulations shall be notified within 90 days from the effective date that their petition is on file. Notice of that fact, including the information required in paragraph (a) of this section, shall be published in the FEDERAL REGISTER. All petitions on file on the effective date will be returned to the petitioner with guidelines as specified in § 83.6(c) in order to give the petitioner an opportunity to review, revise, or supplement the petition. The return of the petition will not affect the priority established by the initial filing.

(c) The Assistant Secretary shall also notify, in writing, the Governor and attorney general of any State in which a petitioner resides.

(d) The Assistant Secretary shall also cause to be published the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest to the petitioner. The notice will include, in addition to the information in paragraph (a) of this section, notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to the petition. Such submissions shall be provided to the petitioner upon receipt by the Federal acknowledgement staff. The petitioner shall be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

§ 83.9 Processing the petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine

whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evidence, and the factual statements contained therein. The Assistant Secretary may also initiate other research by his staff, for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) Prior to actual consideration of the petition, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review, and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal acknowledgement project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner and other parties submitting comments on the petition shall be notified when the petition comes under active consideration. They shall also be notified who is the primary Bureau staff member reviewing the petition, his backup, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member.

(e) A petitioning group may, at its option and upon written request, withdraw its petition prior to publication by the Assistant Secretary of his finding in the FEDERAL REGISTER and, may if it so desires, file an entirely new petition. Such petitioners shall not lose their priority date by withdrawing and resubmitting their petitions later, provided the time periods in paragraph (f) of this section shall begin upon active consideration of the resubmitted petition.

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

(g) Upon publication of the proposed findings, any individual or organization wishing to challenge the proposed findings shall have a 120-day response period to present factual or legal arguments and evidence to rebut the evidence relied upon.

(h) After consideration of the written arguments and evidence rebutting the proposed findings, the Assistant Secretary shall make a determination regarding the petitioner's status, a summary of which shall be published in the FEDERAL REGISTER within 60 days from the expiration of the response period. The determination will become effective in 60 days from publication unless earlier withdrawn pursuant to § 83.10.

(i) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies the criteria in § 83.7.

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 83.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and foward to the petitioner other options, if any, under which application for services and other benefits may be made.

§ 83.10 Reconsideration and final action.

(a) The Assistant Secretary's decision shall be final for the Department unless the Secretary requests him to reconsider within 60 days of such publication. If the Secretary recommends reconsideration, the Assistant Secretary shall consult with the Secretary, review his initial determination, and issue a reconsidered decision within 60 days which shall be final and effective upon publication.

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information not of record, such information shall be identified as to source and nature, and inserted in the record.

(c) The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision, which in his opinion:

(1) Would be changed by significant new evidence which he has received subsequent to the publication of the decision; or

(2) A substantial portion of the evidence relied on was unreliable or was of little probative value; or

(3) The petitioner's or the Bureau's research appears inadequate or incomplete in some material respect.

(d) Any notice which by the terms of these regulations must be published in the FEDERAL REGISTER, shall also be mailed to the petitioner, the Governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

§ 83.11 Implementation of decisions.

(a) Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes. Acknowledgment shall subject such Indian tribes to the same authority of Congress and the United States to which other federally acknowledged tribes are subject.

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgment that the petitioner exists as an Indian tribe, the appropriate Area Office shall consult and develop in cooperation with the group, and forward to the Assistant Secretary, a determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

STATEMENT OF LONNIE REVELS
NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS
ON BEHALF OF GOVERNOR JAMES G. MARTIN
AND THE STATE OF NORTH CAROLINA

Mr. Chairman and members of the Committee, on behalf of Governor James G. Martin and the State of North Carolina, I am honored to have the opportunity to share with you the support of the state of North Carolina for the Lumbee Tribe in their effort to obtain recognition by the United States of America. I am Lonnie Revels, and I serve as the Chairman of the North Carolina Commission of Indian Affairs. The Governor asked me to appear at this hearing to express to you our support for the Lumbee Tribe.

The North Carolina Commission of Indian Affairs is a state agency housed within the Department of Administration. It was created in 1971, is governed by a Board of 24 members (seventeen representatives from five North Carolina tribes, the three urban Indian groups, and seven state officials) and has among its principle responsibilities to:

> . . . study the existing status of recognition of all [North Carolina] Indian groups, tribes and communities presently existing in the State of North Carolina; to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups; to provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government. N.C.G.S. § 143B-407

The state of North Carolina has, since 1885, recognized the Lumbee Tribe as a separate and viable Indian entity within Robeson County, North Carolina. The history of the

Lumbee Tribe reflects their autonomous and separate character. Documents from the time of early contact with European settlers indicate that the Lumbee Tribal members are "Cheraw" by descent. A Cheraw Indian community was located on Drowning Creek; which has been renamed and is currently known as the Lumber river. The Lumber river has been the site on which most of the Lumbee Indian community has been found in Robeson County. In 1933, an anthropologist named John Swanton, while working for the Bureau of American Ethnology, concluded that the members of the Lumbee Tribe are descendants of the Cheraw Indians.

In 1885, three separate school systems were established in Robeson County by the North Carolina legislature: one for the Indian community, one for the white community and one to serve the black community. The North Carolina legislature, this same year, designated the Indians of Robeson County as "Croatans". Pembroke State University, now a part of the statewide university system, began as part of the separate Lumbee school system in 1887 and was initially known as the Indian Normal School of Robeson County. In 1941, the school's name was changed by the General Assembly to "Pembroke State College for Indians".

In 1911, the Lumbees had their name changed to the Indians of Robeson County; in 1913, they were designated the Cherokee Indians of Robeson County. In 1953, the North Carolina legislature changed the name of the Cherokee

Indians of Robeson County to Lumbee and recognized the tribe as such.

The Commission of Indian Affairs at its March 17, 1988 meeting, unanimously voted in favor of a resolution calling for support of the Lumbee Tribe's effort to gain federal recognition. Governor Martin has also endorsed their effort.

The Lumbee Tribe petitioned the United States Department of the Interior for federal acknowledgement pursuant to 25 C.F.R. Part 83, in December of 1987. The filing of this petition was another in a series of efforts by the Lumbee Tribe to achieve "federal recognition" by the United States of America. The Lumbee Tribe first filed for federal recognition in 1888. Since that time, the Tribe has continuously sought recognition status by the United States Congress or the Department of the Interior.

In 1956, the United States Congress passed the Lumbee Act, (70 Stat. 254). This bill acknowledged the Indian ancestry of the Lumbees and the continuous existence of the tribe since European contact. The legislative intent in the passage of the bill was to recognize the Lumbee Tribe, but in keeping with administrative policies in effect at that time, the Department of the Interior urged that the bill be amended to name the tribe as Lumbee but also sought to preclude recognition, and therefore services, from the federal government. The relevant language of the bill follows:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

This "catch-22" language puts the Lumbee tribe in the ackward position of being "recognized" as Indians but not being able to obtain any of the important rights or benefits that inure with this important status. This legislative language was written during the infamous "Termination Era"; a period of time when over one hundred federally recognized tribes had their relationship with the federal government put to an end. This language, in effect, limited the scope of the Lumbee Act of 1956 and consequently precluded recognition of the Lumbee tribe. We believe that the Lumbee Tribe deserves to be fully recognized as an Indian tribe by the United States of America, and with this recognition they should be entitled to receive all the rights and benefits that go with this important privilege.

On behalf of Governor Martin, the North Carolina Commission of Indian Affairs and the great state of North Carolina, I humbly request your considered support of House Bill 5042.

TESTIMONY OF DR. JACK CAMPISI BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE IN SUPPORT OF S 2672

Between 1982 and 1988 I conducted a number of studies for the Lumbee tribe of North Carolina. Each of these included fieldwork in the community for periods of time varying from a week to three weeks. In all, I spent over twenty weeks in Robeson County carrying out a variety of research projects. Besides being responsible for synthesizing the thousands of pages of documentation collected during the ten years it took to carry out the archival research, and for designing and carrying out the community research, I had the honor of writing the petition that was submitted on December 17, 1987, to the Branch of Acknowledgment and Research. Specifically, I drafted the Historical Narrative section, and researched and wrote the sections dealing with community and political continuity. The material that follows is taken from the Lumbee tribe's Petition For Federal Acknowledgment. A complete copy of the petition is appended to this statement for the committee's convenience.

Over the course of the past ten years I have worked on eighteen petitions. None has exceeded the Lumbee petition in documentation and no group has exhibited more evidence of community cohesion and political continuity than the Lumbee tribe. It is my professional opinion that the Lumbee tribe meets the substantive criteria for recognition. I will outline below the main arguments and evidence in support of this conclusion.

Origin

One of the principal research questions I was called upon to answer was: from what tribal antecedent or antecedents do the Lumbee descend? The tribe, through its legal counsel, Lumbee River Legal Services, Inc., conducted an exhaustive archival research that produced a series of documents which I believe provide the best and most plausible explanation of the tribe's origin.

After a careful review of the available evidence, it is my best professional judgment that the present-day Lumbee tribe is directly descended from Siouan-speaking peoples who inhabited the region at the beginning of the eighteenth century, and that the Cheraw tribe formed the core population of this group. I base this conclusion on a number of eighteenth century documents as well as the opinion of Dr. John Reed Swanton, for many years an anthropologist with the Bureau of American Ethnology and one of the foremost authorities on southeastern Indians.

First, the documentation. The Cheraw tribe's presence in the vicinity of Robeson County was documented in 1725 on a map made by John Herbert. Herbert was the commissioner of Indian trade for the Wineau Factory on the Black River, the closest European outpost to Drowning Creek. This position allowed him an intimate knowledge of the tribes in the Pee Dee River drainage area. Drowning Creek, a tributary of the Little Pee Dee River, was re-named the Lumber River by an act of the North Carolina Legislature. It is in the center of the Lumbee territory, and it is from the river's name that the present tribal name derives.

The second piece of evidence placing the Cheraw tribe in the Drowning Creek area is a land grant. On August 4, 1737, Robert, chief of the Cheraw, and fourteen of the tribe's leaders signed an instrument surrendering their lands along both sides of the Pee Dee River, but retaining title to two parcels in the vicinity of Drowning Creek. The next reference to the community occurs in 1754, when Governor Arthur Dobbs of North Carolina requested information on the condition of the militia in the various counties. He received a report that there was a community consisting of some fifty families living on Drowning Creek, "a lawless people filled the lands without patent or paying quit rents shot a surveyor for coming to view vacant lands being enclosed by great swamps." The area in question was considered, at that time, to be the frontier between Indians and non-Indians.

The clearest evidence of the existence of an Indian community on the Drowning Creek is provided by an article in the South Carolina Gazette of October 3, 1771. The paper reported the capture of an escaped convict "near Drowning Creek, in the Charraw Settlement." Two years later, in 1773, there was apparently a civil disturbance in this community, for an unnamed individual compiled "A List of the Mob Railously Assembled together in Bladen County." This list contains eight surnames associated with the ancestors of present-day Lumbees -- Ivey, Sweat, Groom, Locklear, Chavours (Chavis), Dees, Stapbleton, and Carsey. Many modern Lumbees trace descent from Major Locklear, who is identified in the report as a leader, and from his brother, John Locklear.

There are four core families among the Lumbees: Locklear,

Lowry, Oxendine, and Chavis. They appear in every federal census taken in the area, beginning with the first in 1790. The tribal members who testified before this committee -- Adolph Dial, Harold Deese, Ruth Locklear, and Arlinda Locklear -- can all trace their ancestry back to either Major or Robert Locklear, and to at least two of the four core families. And they are not exceptions.

In summary, the evidence strongly indicates the existence of a Cheraw Indian community on Drowning Creek from the early eighteenth century, and that the members of that community are the ancestors of the present-day tribe.

This position is supported by Dr. John R. Swanton, who, in 1934, at the request of the Department of Interior, concluded that the Lumbees were descended from "... certain Siouan tribes of which the most prominent were the Cheraw and Keyauwee, but they probably included as well remnants of the Eno, and Shakori, and very likely some of the coastal groups such as the Waccamaw and Cape Fears."

Given the long history of the community, there are relatively few documents on its origin and development. This is a function of the settlement pattern in North Carolina, as well as the area's topography. The usual pattern of settlement is a general westward movement from the Atlantic coast. However, this was not the pattern that occurred in North Carolina. Instead, there was a movement from north to south along the coast and the fall line. In addition, the back country of the colony was settled by ethnic groups, including the Scotch-Irish, Germans, Welch, Swiss and French Huguenots. The diversity in language and culture limited

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the contacts among the groups. Nor were any of these close to the Lumbee settlement. There were no roads in the area, which consisted of many interconnected swamps that formed a barrier to Euro-American settlement and a haven for the Lumbees' ancestors. This geographical isolation gave protection, but resulted in limited contact with non-Indians. Thus, substantial and continuous white contact did not begin until the 1830's; from that time on there has been continuous documentation of tribal existence.

AN OVERVIEW OF LUMBEE TRIBAL HISTORY

That there was a separate and continuous Indian community in Robeson County during the ante-bellum period is clear from state court and federal census records. Although generally classified as free non-whites during the post-Revolutionary War years, the Lumbees appear to have been treated more generously than free blacks, being allowed to vote without challenge and to own property. However, in the 1830's two seemingly unrelated actions -- one by the national government and the other by the State of North Carolina -- converged, with disastrous impact on the Indians of the state. In 1830 Congress passed legislation providing for the removal of all Indian tribes east of the Mississippi River to land set aside in the "Indian Territory" in Oklahoma. Tribes such as the Cherokee and Creek were forced to leave. In the climate of removal, it did not benefit a tribe to overtly manifest its identity. Lumbees, like other Indians in the state, held their land in severalty, but often without

patents. Thus, they were in a precarious position.

Added to the problem of tribal survival was the steadily worsening relationship between whites and "people of color" in North Carolina following Nat Turner's uprising in 1831. In 1835, the state passed a constitutional amendment denying tribal members rights they had previously enjoyed. Many refused to abide by the changes and some were charged with violations. One case, in particular, went far toward recognizing the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun, a violation of state law. He was convicted, but promptly appealed, claiming that the law only restricted free Negroes, not persons of color. The appeals court reversed the lower court, finding that "Free persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from negro ancestors beyond the fourth degree." The following year, in 1859, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself. These cases generally resulted in the Lumbees establishing a special status under the law as Indians, one outside the limitations placed on others who were classified as "free persons of color."

The federal census records are by far the best source of evidence concerning the Lumbee community. It is clear from the names of the heads of households that the area of Robeson County around Drowning Creek was occupied almost exclusively by tribal members. Based on the 1850 census (the first census to provide

the names of the individuals resident in each household) it is possible to describe the residency patterns of the Lumbee community. Thus, there can be no doubt that there was an Indian community present along Drowning Creek from the mid-1700's, separate from other communities in the area. It is also certain that this community had a well-established leadership structure and that it managed its affairs with relative autonomy.

From 1860 on, there is abundant evidence of tribal activity. During the Civil War the Lumbee Indians were prohibited from serving in the Confederate Army and were, instead, conscripted into labor gangs and assigned to build the fortifications at the mouth of the Cape Fear River to protect the city of Wilmington. The conditions were harsh and the treatment brutal. Many Lumbee men escaped and returned home where they hid out in the swamps of Robeson County. Besides Lumbees, the swamps provided a refuge for Union soldiers who had escaped from nearby Confederate camps. Because of their treatment by the Confederacy, and more particularly the Home Guard, the Lumbees gave assistance and protection to the Union soldiers. As the number of Lumbees and Union soldiers "laying out" increased, so did the burden of feeding them. With so many men in hiding or conscripted, there were few to do the farm work. Gradually, the attitude of the Lumbees changed from a passive one to one marked by belligerence. In short order, a band emerged, led by the sons of Allen Lowrie.

Matters came to a head in 1864 when members of the Allen Lowrie family and the local authorities came into armed conflict and a number of individuals on both sides were killed. In March of 1865, the Home Guard captured Allen Lowrie and his son,

William, and after holding them for a short time, executed them in a field near the father's house. This was followed by a virtual reign of terror during which the Home Guard tortured members of the Lowrie family and their kinsmen in order to learn the whereabouts of the band. With the death of his father and brother, Henry Berry Lowrie, who was barely twenty years old, took over the leadership of the band. For the next decade, led by Henry Berry Lowrie, and with community support and protection, the band fought against local authorities who sought by a variety of means to oppress the Indian population in Robeson County. The Lowrie Band led a struggle that ended only after the disappearance of its leader in 1872, and the capture and death of the last of the band members in 1874. Every summer since 1976 the Lumbees have put on an outdoor drama entitled "Strike at the Wind." The play tells the story of the Lumbee people and its culture hero, Henry Berry Lowrie.

By the 1870's the Lumbees were openly acknowledged to be Indians. While the Lowrie Band was carrying out its defense, others in the tribe were taking equally effective actions to assert their independence. Lumbees were denied access to the white schools in the county and they refused to attend the schools for blacks. This impasse was broken in 1885, when the Lumbees were recognized by the State of North Carolina as an Indian tribe and permitted to establish a school system for the children of tribal members only. Tribal members exercised complete control over who could attend the schools. Each Lumbee settlement had a school committee that determined eligibility. In order to be eligible an individual had to prove Lumbee ancestry

back through the fourth generation; that is, back to the 1770's. In addition, there could be no black ancestry closer than the fifth generation. Because of the rigorous manner in which these rules were enforced in the nineteenth century, school enrollment provides an accurate basis for determining present-day membership.

In 1887, tribal members petitioned the state legislature, requesting the establishment of a normal school. Permission was granted, tribal members raised the funds, and along with some state assistance, the normal school began training teachers for the expanding Lumbee school system. That normal school is today Pembroke State University. In 1888, the tribe petitioned the Congress for educational assistance. The request was sent by the House Committee on Indian Affairs to the Commissioner of Indian Affairs, but no action was taken for nearly two years. Finally, in 1890, Commissioner Morgan responded to the tribe, telling them that "So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes." There is no doubt that the government's rejection of assistance was based solely on economic considerations; the commissioner implying that if sufficient funds had been available services would have been provided to tribes he referred to as "civilized."

The Lumbees made frequent attempts over the course of the next fifty years to receive assistance from the United States. In 1899, Congressman John D. Bellamy introduced legislation to provide educational assistance for the Croatan Indians (as the

Lumbees were then called). Again, in 1910 and 1911, legislation was introduced in Congress to change the tribe's name and to establish "... a school for the Indians of Robeson County, North Carolina." To secure information on the tribe the Indian Office sent Charles F. Pierce, Supervisor of Indian Schools, to investigate. He reported favorably on the tribe, finding "... a large majority as being at least three-fourths Indian." He described them as being law abiding and industrious and "crazy on the subject of education." Pierce had no doubt that the Lumbees were Indians, or that they were a tribe. Nor did he doubt that federal educational assistance would be beneficial. He opposed the legislation because, in his words, "At the present time it is the avowed policy of the government to require states having an Indian population to assume the burden and responsibility for their education, so far as is possible." After lengthy deliberations, the bill passed the Senate, but not the House, because the chairman of the House committee felt that the Lumbees were eligible to attend the various Indian boarding schools.

The tribe continued its efforts to secure federal educational assistance, and in 1914, sent a delegation to Congress. Another investigation was carried out by the Indian Office at the direction of the Senate. Among other things, Special Indian Agent, O.M. McPherson found that the tribe had developed an extensive system of schools, a complex political organization to represent its interests, and that the tribe was, in some degree, an "... amalgamation between the Indians residing on the Lumber River and the Cheraws, who were their nearest neighbors." He noted that the Lumbees were eligible to attend federal Indian

schools, but doubted that these schools would meet their needs. His recommendation was that if Congress saw fit to establish a school, it should be one emphasizing agricultural and mechanical skills. Again, Congress took no action. Parenthetically, it should be noted that during this period tribal activity was generally at a low level across the United States. Not so for the Lumbees, who actively involved their congressmen in their efforts to achieve federal recognition.

Following the First World War, the Lumbees renewed their efforts, both in the state and with Congress, to improve their educational system. At the state level, they were able to get an appropriation of $75,000 for capital improvements at the Cherokee Indian Normal School, as the tribe's teacher training institution was then called. The issue of the tribe's name had become a concern, and tribal leaders sought legislation in Congress to recognize the name adopted by the state legislature -- The Cherokee Indians of Robeson and Adjoining Counties in North Carolina. Such a bill was introduced in the Senate in 1924, and at first received favorable support from the Secretary of the Interior, although Commissioner of Indian Affairs Charles H. Burke opposed the legislation. The secretary later dropped his support and the bill died.

The efforts to establish congressional recognition were resumed in 1932. Senator Josiah W. Bailey submitted legislation designating the Indians of Robeson and adjoining counties as "Cherokee Indians," but this effort also failed. The following year another bill was proposed, this time designating the tribe as the "Cheraw Indians," at the suggestion of Dr. Swanton. This

name caused a split in the tribe, with those tribal members led by Joe Brooks favoring it, while others, led by D.F. Lowry opposing it, fearing it would jeopardize the tribe's control over its schools. Because of the split in the tribe the effort failed. With the passage of the Indian Reorganization Act, Brooks and his supporters attempted to organize the tribe under a federal charter. Because the tribe did not possess a land base, it was advised by Assistant Solicitor Felix Cohen to organize under the half-blood provision of the act. Cohen urged that the tribe apply for land and a charter under the name of the "Siouan Indian Community of Lumber River." Brooks immediately submitted a proposal that mirrored Cohen's recommendations. Over the course of the next two years the two projects of establishing recognition under the IRA and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the BIA to the Rural Resettlement Administration, and the land that was to be purchased solely for Lumbee use, was opened to non-Indians. After a lengthy struggle, Brooks was able to have a part of the land set aside for tribal members, and incorporated under the name of the Red Banks Association.

The tribe was no more successful in achieving recognition under the IRA. The BIA formed a commission of three to investigate the blood quantum of the Lumbees. In 1936, Dr. Carl C. Seltzer, an anthropologist and member of the commission, visited Robeson County on two occasions and took physical data on 209 Indians applying for recognition as one-half or more Indian blood. He found that twenty-two met the criteria. They were

certified by the Secretary of the Interior. What made Seltzer's work so ludicrous was that in several cases he certified full siblings in different ways; one meeting the blood quantum requirement and the other not.

It was not until after the Second World War that the Lumbees again tried to achieve federal acknowledgment of their status as a tribe. The issue of their name continued to cause them problems so, in 1952, the Lumbee leadership conducted a referendum on the name. Of 2,144 tribal members who voted, all but 35 favored the use of the name "Lumbee." Armed with this overwhelming support, the leader of the movement, D.F. Lowry, asked the state legislature to adopt the change. The legislature approved the name change in 1953. The tribe then took its case to Congress, which, in 1956, passed the Lumbee Bill.

There can be no doubt that for more than 200 years the Lumbees have been continuously and repeatedly recognized as American Indians. This was made explicit by the state in the 1880's and by the federal government from at least the beginning of the twentieth century on. Federal and state officials have, on numerous occasions, reviewed the evidence and at no time did they question the fact that the tribe consisted of people of Indian descent. Federal reluctance to acknowledge the tribe centered more on questions involving the extension of services. It was unfortunate that each effort by the Lumbees to clarify their federal status and to receive services coincided with federal Indian policy shifts away from the trust relationship: the General Allotment Act in 1887; the Citizenship Act of 1924, and the Termination policy of the 1950's. The exception, the

Indian Reorganization Act, which could have provided a means to recognition, was subverted by bad anthropology and bureaucratic indolence.

RECENT LUMBEE HISTORY

Since the passage of the Lumbee Bill the tribe has faced a steady string of problems, beginning with an attempt by the Ku Klux Klan to intimidate tribal members in 1958. The tribe's reaction to this threat was a spontaneous gathering that drove the klansmen from the field and broke up their rally. The tribal members have exerted their influence in other ways. In the 1960's they organized voter registration drives that made their influence felt on local politics, electing members of the tribe to public offices. When the local school authorities attempted to integrate only the black and Indian schools in the county tribal members staged sit-ins and filed lawsuits to prevent the loss of tribal control over the schools. It must be understood that the school system was and is a key and intregal part of tribal identity, and any threat to the tribe's control would be resisted. And resisted it was!

While the tribe was struggling to maintain its schools it was actively opposing the so-called "double voting" system, which allowed whites in the towns (which had separate school districts) to vote with whites in the county, who were in the minority, to maintain white control over the county school system. The students in the county school system were predominantly Indian and black. Tribal leaders took the case to federal court, and

after losing at the district court, won a reversal at the court of appeals, thus ending double voting.

At about the same time tribal leaders became involved in an issue with high symbolic value to the tribe. In 1972, the Board of Trustees of Pembroke State University decided to demolish the main building on the campus and replace it with another structure. Very quickly, a group formed to "Save Old Main." The group waged a statewide and national campaign to save the building, and just at the point when it seemed that they would be victorious, the building was burned to the ground. The tribe overcame this blow and campaigned hard for the reconstruction of Old Main, which they eventually accomplished. The building was completed in 1975 and made the site of the Pembroke State University's Native American Resource Center.

Since the end of World War II the tribe has grown in stature and influence. It was a primary mover in the establishment of North Carolina Commission of Indian Affairs, an organization that has become a model for state Indian commissions. The Lumbees have played an instrumental role in county affairs, where they have represented a moderating influence. That attitude has been sorely tested in recent years. They have had tribal members sentenced to death in disproportionate numbers by the local courts, while others have been the victims of police actions. Two years ago one unarmed member of the tribe was shot and killed by a deputy sheriff who alleged he was under threat by the man swinging a plastic pail. More recently, there has been the murder of Julian T. Pierce, attorney and candidate for judge, and the principal catalyst of the most recent recognition effort. That

murder is still unsolved and is indicative of the conditions under which tribal members live. It is little wonder that, on occasion, tribal members, out of their frustration with the treatment they receive at the county level, seek to redress their grievances in a more direct fashion.

THE LUMBEE COMMUNITY TODAY

The Lumbee tribe consists of some 35,000 members, the majority of whom live in Robeson County. Despite the community's size, Lumbees are held together by the same mechanisms and values that have kept them together for the past one hundred years or more. First and foremost is the family. The overwhelming majority of informal social activities center around the family. There is continual and widespread visiting among adults, particularly in the homes of parents and grandparents. Often, children live near their parents on land that was part of the family homestead. Members of families speak and visit each other on an almost daily basis.

The knowledge that the average Lumbee has of who is his or her kin is truly astounding. It is very common for individuals to be able to trace their parents' genealogies back five or more generations. Not only are individuals able to name their grandparents, great grandparents, great great grandparents etc., but often they can name the siblings of their ancestors, the spouses of their ancestors' siblings, relate where they lived in Robeson County, the church they attended, and the names of their offspring. It is not uncommon for an individual to name two or

three hundred individuals as members of the immediate family. Every year there are family reunions that attract members from all over the country, They vary in size from small gatherings of a few hundred "close kin" to reunions involving a thousand or more persons.

Membership in the Lumbee tribe is a matter that attracts the close scrutiny of the tribe. During my research I had many opportunities to observe the process of enrollment firsthand. I attended meetings of the Elders Committee and observed the care and diligence with which the Lumbee Tribal Enrollment Office researched each person's ancestry. I can tell you from my experience, this was the best organized program of enrollment I have ever observed.

Two factors contribute to this extensive network of kin relations. Most Lumbees prefer to live in Robeson and adjoining counties. When they are forced by economic conditions to move away they maintain close ties by phone and frequent visits. The other factor that contributes to the solidarity of the tribe is a pronounced tendency to marry in -- a decided preference among Lumbees to marry other Lumbees.

Religion also serves to maintain the social boundaries of the Lumbee tribe. By social boundaries I mean that there are membership rules, special beliefs and values, a unique history, and a system of political authority and decision-making that marks the Lumbees as a separate community. There are over 120 Lumbee Indian churches in Robeson County, and with one or two exceptions, each has a Lumbee minister. The Lumbee Indian churches are grouped into four categories: The Burnt Swamp

Baptist Association (forty-six churches), the North Carolina Conference of the United Methodist Church (twelve churches), the Lumber River Holiness Methodist Conference (nine churches), and the non-affiliated churches (fifty-five). Church membership crosses family lines and settlement areas, thus drawing together different sectors of the tribe.

For the Lumbees, church is more than a religious experience; it is one of their most important social activities. It involves many of them on a daily basis. The churches have Sunday schools, youth organizations, senior citizen's programs, Bible study programs, and chorus practices, to mention but a few of the activities available. It is not uncommon for members of the same household to attend different churches, and this behavior further acts to bring the tribal membership together.

An additional and important activity of the churches is to hold an annual "homecoming" during the fall. The event is well advertised and individuals come from great distances to attend. Homecomings are held on Sundays after church service and are open to all Lumbees. Families and friends gather in a church's fellowship hall and share a liesurely meal together. Commonly, there are several hundred tribal members in attendance. Homecomings are informal gatherings which offer opportunities for members of a family from different congregations to join with other families.

The family and the churches also provide the main avenues for political participation. In studying the Lumbee community it is clear that leadership over the years has tended to surface in the same families from generation to generation, something like a

system of inherited leadership. These leaders have gained prominence through their participation in the educational system and as church leaders. In the past, many of the tribe's most dynamic leaders were ministers and teachers. Today there are other avenues for the demonstration of leadership qualities, but family, education and religious values still command attention.

In recent years there have been many expressions of the strength of Lumbee political cohesion. This year, for example, the Lumbees, led by Julian Pierce, successfully supported a referendum establishing a unified school system throughout the county. And following the murder of Mr. Pierce, the tribe organized a voter turn-out drive that resulted in his winning the judgeship that he had been seeking at the time of his death. His margin of victory in the county-wide election was 55%; in the Indian wards he received almost unanimous voter support.

CONCLUSIONS

Over the years of my association with the Lumbee tribe, and as a result of intensive study of the documents and extensive research in the community, it is my professional opinion that the Lumbee tribe meets every criteria for federal recognition, with the possible exception of criterion (g); have they been subject to a congressional termination. That is a legal question that I cannot answer. My research convinces me that they are of Indian descent, most probably from the Cheraw tribe; that they have maintained tribal organization from the time of substantial white contact; that they have always maintained a stable community through which they have exerted influence over their members; and that they are today a tribe in every sense of the word except one: the lack of federal recognition.

STATEMENT OF DR. RAYMOND D. FOGELSON, UNIVERSITY OF CHICAGO
ON S. 2672, BEFORE THE UNITED STATES SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
August 12, 1988

My name is Ray Fogelson, and I am a professor of anthropology at the University of Chicago. I wish to add my voice in support of the proposed bill to provide federal recognition for the Lumbee Tribe of North Carolina.

My interest in the Lumbees dates back to the late 1950's. During that period I was engaged in field research among the Eastern Cherokees. I was especially drawn to the Lumbees because one of their official designations during the first half of this century was "Cherokees of Robeson County," an identification that the Eastern Cherokees vigorously repudiated. I read most of the accessible literature and became fairly well convinced that the Lumbees descended from various of the so-called "Eastern Siouan" groups.

My first actual contact with the Lumbee Indians occurred during the 1957 Powwow of the Shinnecock Indians of Long Island. The Lumbees participated in the fair along with many other Indians, including Mohawks, Catawbas, Narrangansetts, and Penobscots. In my brief conversations with the Lumbee visitors I learned a little about their situation in North Carolina and their continuing struggle to achieve federal recognition. I made indefinite plans to pursue field work in Robeson County some day in the future, but unfortunately that day never came.

Indirect involvement with Lumbee questions resurfaced in 1966 when I started working with a talented graduate student at

the University of Chicago, Karen Blu, now a professor at New York University. She was searching for a suitable dissertation topic, and I suggested that she investigate the Lumbee situation.

After several years of diligent field research and extensive archival work, Karen Blu produced an excellent dissertation entitled, "We People: Understanding Lumbee Indian Identity in a Tri-Racial Situation," (University of Chicago, 1972). The dissertation was supplemented by additional research, revised, and published by the prestigious Cambridge University Press in 1980 as The Lumbee Problem: The Making of an American Indian People. Professor Blu's works, along with the book by Professor Adolph Dial and David Eliades, The Only Land I Know (1975), together provide the best published surveys of Lumbee ethnohistory and recent conditions. Much of my knowledge of the Lumbees therefore comes second-hand from a close supervision of Karen Blu's research. This involved an extended dialogue carried on through conversation, exchange of letters, reading of her field notes, and a critical commentary on her dissertation.

Other credentials for testifying on the present bill include my continuing research on Southeastern Indians over the past twenty years; my current position as editor of the Southeastern volume of the Smithsonian's Handbook of North American Indians; and my present tenure as President of the American Society of Ethnohistory.

Passage of the proposed bill to recognize the Lumbee Tribe would constitute a major step to rectify past injustices and to

help set the Lumbees on a hopeful path for a promising future. The Lumbee case is unique in the annals of Indian-white relations. Lumbee efforts to be recognized have dragged on for over a century. The ebb and flow of this struggle and its legal entanglements are well documented in the Petition. Rising hopes for federal recognition have served to strengthen the collective conscience of the Lumbee, while repeated failures to attain this recognition have left in their wake bitter despair and factional strife. The Lumbee have been jerked around on the end of this legislative yo-yo string long enough. We have now reached another crisis point. The present Petition reflects an unusual degree of careful preparation and scholarship. In my judgment it persuasively answers the questions posed in the current Bureau of Indian Affairs' Guidelines for Federal Recognition. The time for positive action is now -- not in another five, ten, thirty, or one hundred years.

Until now, the principal obstacle to Lumbee recognition was the inability to link the present Lumbee population to an historically known Indian group. When first contacted by white settlers in the Robeson County area, the native inhabitants spoke English and displayed no obvious Indian cultural characteristics. Yet these people consistently identified themselves as Indians, and no one then or since has seriously questioned that there was a significant Indian component in their ancestry. The chronic question that has plagued Lumbee history and exercised the ethnohistorical imagination has been the specific identity of the

Indians from whom they were descended. The litany of presumed ancestors is legion: Croatans (or more properly Algonkian-speaking Hatteras Indians) who intermarried with the supposed survivors of the Lost Colony of Roanoke Island; Iroquoian-speaking Cherokees (perhaps based on a phonologic similarity to the name Cheraw) or Tuscaroran remnants from the Piedmont; and, finally, any of several possible small "Eastern Siouan" groups displaced during the early colonial period.

The label "Eastern Siouan" requires comment, since in the popular mind it conjures up images of horseback Plains buffalo hunters. On strict linguistic grounds we can only say with certainty that the Tutelos of Virginia and the Catawbas of South Carolina spoke a Siouan language; in addition, Yuchi, currently classified as a linguistic isolate, seems to contain a sizeable number of proto-Siouan cognates. Nevertheless, ever since the pioneering works of James Mooney in Siouan Tribe of the East (1894), ethnologists have suspected that many now extinct languages in the area were also Siouan. Indirect support for such a hypothesis comes from archeological continuities and connections, from ethnological similarities reported in the early literature, and from historically known political alliances. In the case of the Cheraws, the prime candidate in the Petition for Lumbee progenitors, we have the early statement of James Adair (1776) that Cheraw (along with Eno) was a branch of the Catawba language.

In his testimony before the Senate in 1934 and in subsequent

publications, it was John R. Swanton who, through a careful analysis of the documents, first argued that the probable identity of the so-called "Croatan" Indians was with the Cheraws and the related Keyauwee. Swanton's argument was plausibly based primarily on the locations of historic groups at the time of initial white contact. Swanton's conclusions deserve to be taken seriously. He remains the preeminent scholar of Southeastern Indians, and he was a man who almost singlehandedly created the discipline of ethnohistory. His monumental Indians of the Southeastern United States (1946) is still authoritative, and most later research in the area may be considered footnotes to his worthy labors.

Swanton, as in the present Petition, does not presume a monogenetic Cheraw origin for the present Lumbees. In addition to indisputable black and white admixture, he recognizes that refugees from other Eastern Siouan groups, and probably other Indian groups as well, contributed to the gene pool of the modern Lumbee population. The present Petition builds upon Swanton's argument that the Cheraws were the primary ancestors of the Lumbees by presenting new documentary evidence that settlements in the Drowning Creek area were referred to as Cheraw. As additional support, not presented in the Petition, Stanley South, a prominent Carolina historical archeologist, suggests a similar ethnogenesis for the Lumbees. In 1959, he writes,

> "By 1750 the Cheraw had left their homes near the town of Cheraw, South Carolina, and had moved in with the Catawba.

> One group refused to join the Catawba, and may have moved into the present area of Robeson County where the Lumbee Indians are now living. These Lumbee are probably the descendants of the last of the Cheraw. (1959: 50)."

While recognizing the composite origins of the present day Lumbees, I am persuaded by the evidence that the dominant Indian component of the Lumbee ancestry was Cheraw. Such a conclusion has an ironic twist. The Lumbees, who have for so long sought legitimizing Indian ancestors, now appear to be connected to a group with an established lineage extending back to 1540 with the early phases of DeSoto's expedition into the Southeast. At this time there were no distinguishable Navajos, initial Cherokee contact was still several months away, and no Siouan horseman roamed the Plains.

Another important criterion in the B.I.A. Guidelines for Federal Recognition is the presentation of evidence of tribal political influence over members throughout history to the present. Owing to the isolation and marginality of the Lumbees, early documentation of political processes is understandably scarce. The position taken by the Petition is that the Lumbee population has maintained a self-conscious sense of community through time and that this communal continuity requires adaptive mechanisms for maintaining social order and for responding to internal and external problems. Traditional chieftainships or formally constituted assemblies have not been features of historical Lumbee political organization, although such

institutions doubtless were present among the Cheraws at the time of DeSoto. Instead, leadership was more informally based upon kinship, locality, religious affiliation, and situational context. Such leadership patterns sufficed over the larger portions of Lumbee history. However, as Lumbee isolation dissolved and their external visibility as a distinctive group increased, more formalized political processes have emerged to deal with local, state, and federal affairs. The recent histories of these organizations are clearly set forth in the Petition.

I will leave for others discussion of additional criteria in the B.I.A. Guidelines. These criteria are covered well in the text of the Petition.

Let me make some general observations by way of conclusion. Last May I testified before the Senate Select Committee on Indian Affairs and pointed out what I regarded as serious weaknesses in the B.I.A. Guidelines and in recognition procedures. That testimony is a matter of record, and I won't go over that ground again today. However, in preparing my previous testimony, I reviewed some of the successful petitions that cleared the rigorous B.I.A. Acknowledgment Branch. Among Southeastern tribes, these included the Tunicas of the Lower Mississippi and the Poarch Creeks of Georgia; I am also familiar with the history of the now recognized Catawbas, who are probably the closest surviving relatives of the Lumbees. I strongly concur with the decisions to extend federal recognition to these groups. The

present Lumbee Petition directly addresses all the criteria of the B.I.A. Guidelines and in my opinion satisfies them in a convincing manner. The Lumbee Petition in my estimation is as strong, if not stronger, than the above mentioned cases. Failure to pass this bill would be inconsistent with federal policy and past decisions. Moreover, such failure would perpetuate historic injustice.

Two events stand out in the Lumbee recounting of their own history. First is the now legendary exploits of Henry Berry Lowrie and his band during the difficult Reconstruction Era. In his fine book, To Die Game (1971), W. McKee Evans writes,

> "...the bold deeds of the Lowrys...filled the Lumber River Indians with a new pride of race, and a new confidence that despite generations of defeat, revitalized their will to survive as a people."

The second event was the dramatic attack on the Ku Klux Klan rally in Maxton in 1958, which propelled the Lumbees into national media prominence. Passage of this bill would mark a third milestone in Lumbee history. In another place, Evans epitomizes the essence of the Lumbee struggle for recognition: "...most Lumbees are less interested in becoming brown-skinned Anglo-Saxons than in establishing their own identity within a society free from ethnic oppression." (1979:68).

S. 2672

Testimony of William C. Sturtevant before the
Select Committee on Indian Affairs,
U. S. Senate
August 12, 1988

[Qualifications: PhD in anthropology, Yale Univ., 1955; Curator of North American Ethnology, Smithsonian Institution, since 1965, previously Ethnologist, B.A.E., Smithsonian Instn. Specialist on history and culture of Eastern Indian tribes, in particular the Seminole of Florida and the Iroquois of New York. Ethnographic fieldwork and archival, library, and museum research on these and other Eastern Indian tribes. General Editor of the Smithsonian's encyclopedic Handbook of North American Indians (7 vols. published since 1978; final work will total 20 vols.). Ex-President of American Anthropological Association and of American Society for Ethnohistory. Intensive research among Lumbee in April, 1961, as observer at Southeastern Regional Conference, hosted by the Lumbee in Pembroke, N.C., leading up to the American Indian Chicago Conference; since then have closely followed published and unpublished anthropological and historical research on Lumbee (including advising Karen Blu on the work resulting in her book The Lumbee Problem: The Making of an American Indian People, Cambridge University Press, 1980).]

I can confirm what Dr Campisi says about the history and present nature of the Lumbee tribe on two bases: that it is consistent with what I knew independently and before he began his research, and from my knowledge of his other work and his scholarly reputation for accuracy and unbiassed integrity.

It is clear that the Lumbee have those characteristics that identify an Indian tribe. Certainly anthropologists who have looked into the case over the last century or so agree that they are an Indian tribe; no anthropologist has denied it. The Lumbee will be covered in a separate chapter in the Handbook of North American Indians, just as each other tribe is described in a separate chapter, and we have envisioned such a separate chapter from the beginning of our editorial planning in the 1960s. The historical and anthropological questions raised about the Lumbee do not involve whether they are descended from aboriginal Indians, but only revolve around which Indian ancestry is predominant and what name is most appropriate. I agree with Dr Campisi that the Cheraw are probable ancestors in the early 18th century. It does not really matter, however, so long as significant Indian ancestry is certain, as it is. The early Colonial period in the interior of North Carolina, for nearly 200 years before the early 18th century is unusually poorly documented, for reasons that Dr Campisi has made clear in his study. Therefore little can be known of the details of the social and cultural amalgamations and changes that

resulted in the tribe ancestral to the Lumbee whose existence is a matter of historical record from about 1725 onwards. Lumbee colonial origins are not greatly different from those of some other Southern Indian tribes--the Seminole and the Catawba, for example, both trace back to the union of bands of different origins, joining to form a new tribe. One difference is that the Lumbee until very recently lacked a distinctive tribal name. But they seem always to have called themselves Indian and to have been recognized as such by their neighbors. The lack of a permanent distinctive name is thus not really relevant to their identity as Indians.

The Lumbee have a signfficant amount of aboriginal Indian ancestry. They have been a distinct community, separate from their neighbors, for as long as good historical records exist--certainly since pre-Revolutionary times. The continuity of the tribe, and its separateness or boundedness, is demonstrated by the continuity of some 10 to 15 distinctive family names. These particular Lumbee surnames, long used as markers of tribal identity, are evidence for the kinship basis of Lumbee society--another characteristic of an Indian tribe.

It was clear to me during my visit in 1961 that the Lumbee had definite political leaders, and Dr Campisi has shown that they had such leaders from the beginning and still do today. Many recognized Indian tribes have had no more formal or unified, structured political organization than the Lumbees have had.

That the Lumbee tribe is not recognized as such by the Federal government is an historical accident. In fact they meet the criteria for Federal recognition as a tribe. By passing this legislation Congress will rectify an old injustice.

STATEMENT OF VINE DELORIA, JR.
PROFESSOR OF LAW AND POLITICAL SCIENCE
UNIVERSITY OF ARIZONA
ON BEHALF OF THE LUMBEE TRIBE

Mr. Chairman and members of the Committee. I appreciate the opportunity to testify on this bill which would to the Lumbee Tribe of North Carolina. I am Vine Deloria, Jr, an enrolled member of the Standing Rock Sioux Tribe of North and South Dakota, a former executive director of the National Congress of American Indians, and presently a professor of Law and Political Science at the University of Arizona.

My knowledge of and relationship with the Lumbee people of North Carolina is based on extensive and prolonged contact with numerous people of the tribe during most of my adult life. My family relationship with this tribe goes even farther back. My aunt, Ella Deloria, a noted linguist in Indian languages, visited the Lumbees in the early 1940's and did some preliminary work on a dictionary of the Siouan languages spoken in that part of North Carolina. Her intent was to reconstruct, as far as possible, the language originally spoken by the antecedent tribes which today constitute the Lumbees. She gathered quite a few words, primarily those involving the names of rivers, creeks, unusual natural geological formations, trees and plants, animals and kinds of animal behavior. Unfortunately the Second World War broke out and funds for continued research were simply no longer available. Before she left the Lumbee area, however, she did assist the people in developing a pageant which portrayed some incidents in the history of the Lumbee people.

Not being a linguist, I will confine myself to other considerations which I believe will help the committee understand the position of the Lumbee Tribe in this matter.

Eastern Indians are in a very difficult position when it comes to proving their ethnic/tribal identity. White settlement within the original thirteen colonies was sporadic at best and reflected changing politics of both the colonies and the Court of England. Sometimes colonies were free to make agreements with the neighboring tribes, other times the proprietary owners of the colonial charter were expected to deal with the Indians. The thrust of British imperial policy was to counteract French and Spanish colonial moves and consequently most pre-Revolutionary Indian policy revolved about the fur trade in the interior of the continent. Consequently tribes that were isolated or not directly influencial in the colonial struggles had few formal contacts with the political authorities of the white settlements. The Cheraw and other tribes in the southeast who lived in remote areas were simply not part of colonial policy unless and until there was a problem with the local white inhabitants of the area. Considerably more attention was given to the Creeks, Cherokees and Choctaws who at one time had alliances with Spain as well as Great Britain.

The United States as a new nation adopted the previous British Policy of treating with the Indian tribes that were most capable of causing military problems and more or less neglected those tribes which did not aggressively defend their lands and claims. Because the Miami-Chippewa-Ottawa coalition in Ohio was so formidable and because white settlers desperately wanted to cross the Ohio River

and settle that fertile country, federal Indian policy focused on tribes in the western country to the exclusion of the Indians who lived in the east and southeast. It was the practice of the military on the frontier to provide gifts, food and lodging to Indians who would come to visit the forts without regard to the particular tribal affiliation of the visitors. (Act of May 13, 1800 - 2 Stat. 6)

Federal Indian policy, insofar as it dealt with recognition of Indian tribes as tribes for whom the United States had trust responsibility, basically evolved as a haphazard extension of programs and political control hardly resembling a coherent policy at all. Sometimes an agent was ordered to visit an Indian group and include them in his scope of supervision, other times Indians simply appeared at agencies and were included with tribes designated to be served by the agency, and other times tribes clearly having a claim against the United States were denied service because the Bureau of Indian Affairs couldn't find them, as happened in the Pacific Northwest once.

The criteria for recognition prior to the establishment of the Bureau's Branch of Acknowledgment and Research were clearly flexible enough to take into account this history of sporadic and intemperate treatment of Indian tribal groups. Congress looked at the evidence and considered the hsitory of deprivation and discrimination and made its decision. The criteria presently required of an Indian tribe seeking recognition is built upon the unarticulated premise that Indians without a specific relationship with the United States government should resemble in political profile tribes which

have been under federal supervision and have had to change their way of constituting and governing themselves to comply with demands made by the federal government. Two characteristics now demanded by the Bureau of Indian Affairs of tribes seeking to receive federal recognition could only have come about by insisting that tribes behave in the manner the Bureau would like them to behave. These two characteristics are: (1) the governing document and evidence of political control of the membership and (2) the list of all known current members of the group.

Traditionally Indians did not find it necessary to adopt a formal political document to describe themselves. Religious beliefs and practices, creation stories, migration stories and allocation of hunting grounds within the tribal group were sufficient to distinguish the tribe from others around it. The Iroquois Constitution is a unique example of this general Indian condition. On the practical level, political control and decision-making were handled by the extended family group. Whether the group was called a band, a long house, a village, or even sometimes a clan, the smaller unit of the extended family was the real core of Indian communal and political existence. The necessity of having a formal government arose because of the United States' insistence that the governing leaders of the tribes represent it in negotiations.

By and large the tribes rejected this demand. In 1851 when the Sioux signed the treaty of Fort Laramie, the United States demanded that they name a chief to represent them. Finally Brave Bear was designated head chief and when he was killed by the Army

in the Mormon Cow incident in 1854, the Sioux concluded that it was dangerous to have a designated head chief. In several other treaties the United States either attempted to create a new form of government for the tribe or insisted that several tribes come together and form a new tribe so that lands could be ceded and boundaries determined. If we wish to speak of the traditional Indian method of government, what distinguished Indians from others who constituted political entities, then we are basically speaking of loose alliances of extended family groups, capable of acting in concert with each other as the occasion demanded.

I stress this aspect of traditional life because, while I believe the Lumbees to have satisfactorily proven that they have maintained a continuous political existence, the committee should note, now and in the future, that formal tribal government is a creation of the Bureau of Indian Affairs and not an Indian characteristic. A traditional Indian community more closely resembles what we find in Robison County among the Lumbees, large extended families who exert social and political control over family members, and who see their family as part of an extended people. This method of government, incidentally, is the only valid and viable way to control human behavior apart from a massive prison system such as we have in the United States today.

The requirement that an Indian tribe seeking federal recognition have a means of determining tribal membership by drawing up a list of its members is also a practice derived from the Bureau's treatment of Indians and not from any inherent Indian practice.

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Tribal rolls originated for the most part in an effort to introduce efficiency into the system of paying tribes treaty annuities. At the beginning annuities were distributed to the chiefs, or heads of families, and their responsibility was to ensure equal distribution of the goods to people within their jurisdiction. As Indian leaders learned more about the white man's way, inequities began to be seen and finally it was determined that each member of a tribe would have his or her name placed on a roll and annuities would be distributed equally to all tribal members.

When tribes agreed to allotments the Bureau would generally take existing annuity rolls and update them, preparing a list of people who were presumed to be tribal members for the purpose of distributing allotments. However the Bureau's capability in providing an accurate roll was no greater then than it is at the present time. Part of the controversy in the case of Lone Wolf v. Hitchcock, 187 U.S. 553 (1903) involved the fact that within a very short period of time the Bureau returned two different census counts of the Kiowas, raising the question of whether or not the required three-fourths of the tribe had agreed to allotment.

The traditional manner of keeping track of members of a tribe was through knowledge of the family and its relationships. Almost the first question asked a person alleging Indian ancestry concerns identification of amily and ancestors. Included in the family network are all those people who have played a social role with respect to the family so that adopted members of the genetic family are seen as valid and viable members of the tribe. How else could one

explain the fact that Spokan Garry, great chief of the Coeur d' Alenes was not genetically a Couer d'Alene and that Washakie, the outstanding leader of the Shoshones was not genetically a Shoshone and that William Weatherford, a man only one-eighth Creek Indian by blood, was nevertheless the leader of the traditional Creeks in their war against Andrew Jackson.

I have visited the Lumbee people in North Carolina and walked in some of their old graveyards and talked with some of their elders. Their maintenance of knowledge about families is extremely impressive. They can trace family members for many generations and, considering that the tribe has several very large and extensive family groups, to be able to keep the various generations and their relationships clear and precise is a considerable feat. It is entirely possible that the Lumbee elders are able to put together a complete list of the tribe for several generations, a feat which many other tribes would be hard-pressed to duplicate, even with government records at their disposal. This knowledge of family is archtypically Indian and should be seen as demonstrating the determined continuance of the central core of Indian identity.

One of the major stumbling blocks in the effort to obtain federal recognition by the Lumbee tribe has been the Act of June 7, 1956 (70 Stat. 255) which purported to identify the Lumbees as American Indians but which also purported to deny them federal services. This statute stands as an anomaly in federal Indian law and the present bill under consideration, if passed into law, would correct the anomalous situation which has existed since 1956. In

almost every other case in which Indian tribes received federal recognition by federal statute during this century, at least part of the proposal involved setting aside some existing federal or state land as a reservation or admitting some commonly-held land to be thereafter recognized as a reservation. Therefore the property aspect of the proposal generally received more attention in Congress than did the cultural identity of the group.

In 1956 American Indians faced a desperate situation in the Congress. When the Menominee Tribe received a judgment against the United States for mismanagement of its timber resources earlier in the century, the decision galvanized then Senator Arthur Watkins into action and he almost singlehandedly initiated the termination policy. In 1954 in a hurried series of hearings conducted by a Joint Subcommittee on Indian Affairs, Watkins pushed several termination bills through Congress over the objection of more knowledgeable members of Congress. These acts have almost all been repealed or the effects of their impact have been considerably been softened.

Senator Watkins' doctrine was that states and private trustees could do a better job of supervision than could the federal government and that terminating Indian tribes would substantially reduce federal expenditures on Indians. The Lumbee tribe bore the brunt of these unsubstantiated beliefs when it sought federal recognition. Its proposed recognition act was amended to disclaim eligibility for services from the federal government, thus creating a status basically previously unknown in federal Indian law. The act did not make sense then and it has subsequently been shunted aside by

succeeding congresses and administrations as an embarrassment and not as a policy statement or guideline. Thus a previous Congress had no hesitation in approving the appointment of Dr. Adolph Dial as one of the Indian members of the American Indian Policy Review Commission and confirming the appointment of Mr. Brantley Blue as a commissioner of the Indian Claims Commission. And subsequent administrations have had no difficulty in employing Lumbee Indians using the Indian preference clause.

The 1956 Act should not be interpreted to cast aspersions on the Identity or entitlement of the Lumbee Tribe of Indians. Any other tribe which might have come to Congress seeking recognition in the middle 1950's would have received the same basic reception and gotten the same muddled definition of its rights. The 1956 Act should be read as another tragedy of that era and not as a separate legal category designed by Congress to recognize a grouo of people as Indian without bestowing on them the same rights as enjoyed by other Indian tribes. The 1956 Act should be repealed in sofar as it purports to create a special status of Indian identity without a corresponding entitlement to services and eligibility for programs.

A good deal of confusion has been generated about the effect of admitting a tribe as large as the Lumbees to full federal services, the claim being made that this increase would deplete the Bureau funds for Indians, depriving other tribes of badly needed programs. This claim ia ridiculous. It is reasonably well known by competent observers of the Bureau of Indian Affairs that funds go to support the bureaucrats, not to assist the Indians. Mr. Chairman,

if this morning this committee made it a federal law that Bureau employees must smile and say "Good Morning" before they entered their offices each day, Mr. Swimmer and his assistants would be up here this afternoon seeking a supplemental appropriation to initiate a program in etiquette for BIA employees. And if you gave them all an immediate pension, they would ask for twice as much and some additional positions in order to put the program into effect. The argument that the Bureau would be greatly overburdened by including the Lumbee Tribe as a fully federally recognized tribe simply doesn't hold water. It is the mental attitude of the Bureau that makes it inept and the federal recognition process is an example of how long the Bureau can stretch out a reasonably simple process if it really wants to do so.

This bill, as written, provides precious little for the Lumbee Tribe of Indians in comparison to the benefits enjoyed by some of the western tribes. The differences are partially explained by the distinct history of eastern Indians as compared with those tribes in the west. Most important, however, passage of this bill will be the first step in correcting a historic neglect and in furthering the process of bringing all identifiable Indian communities within the reach and purview of the federal agency charged with providing services and supervision to American Indian tribes and communities. Congress should continue to intervene in the process of recognition until it has resolved this longstanding problem. Only then can it efficiently and intelligently formulate a proper policy for dealing with the problems of the American Indian people.I urge the prompt

passage of this legislation within this Congress so that the new administration and the new Congress can formulate programs and policies with a much clearer view of the national Indian community.

Thank you.

STATEMENT OF ADOLPH DIAL, ON BEHALF OF THE LUMBEE TRIBE
ON S. 2672, BEFORE THE UNITED STATES SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS
August 12, 1988

In 1888, Marcus Dial, along with other leaders of the Lumbee Tribe, signed a petition to Congress seeking federal recognition of our status as Indians and financial support for the education of our children. The year before the State of North Carolina had established by legislation a normal school for the Indian community, with attendance limited to members of the Croatan Tribe as we were called at the time. The state legislation authorized named tribal leaders to control admission into the school and hire teachers for the school. But the state statute provided only two years of funding for teachers' salaries and none at all for the purchase of land or construction of a school building. The tribe itself donated the land and built the school, but had trouble keeping the school open with so little support from the state. These problems led Marcus Dial and others to petition Congress for support.

My name is Adolph Dial. Marcus Dial was my grandfather. Today, I appear before you for the same purpose as my grandfather one hundred years ago -- to seek federal recognition of our people. I want to describe for you the efforts made by our people since that time so that you can understand the depth of our desire for federal recognition and our frustration over the federal government's callous neglect.

The 1888 petition failed. The House Committee on Indian Affairs asked the Department of the Interior for its opinion. The Department researched our history and eventually responded to

Congress that the Croatan Band, as we were then called, had been recognized by the state and a school system established by the state for the Croatan Indians. But the Department recommended against federal assistance because of insufficient federal funds. In Commissioner Morgan's words:

> "While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes."

This was the beginning of a theme that we were to hear time and again from the federal government -- you may be Indian and you may need our help, but we have too little funds to help you.

In 1899, Congressman John Bellamy introduced a bill that would recognize the Croatan Indians and provide assistance to the Indian normal school. In 1905, our people made a third effort. A rally was held at the Indian normal school for the purpose of securing a federal census of Indians in the community and federal support for the Indian school. Both these efforts failed.

Between 1910 and 1924, no less than five separate bills were introduced to obtain federal recognition and assistance for the Indian normal school in Robeson County. Congress asked the Department of the Interior to investigate the history and needs of our people three times during this period. Each time, the Department acknowledged that we were Indian, but each time the Department recommended against the bill, mostly for fiscal

reasons.

In 1932, our people again sought legislative recognition and Congress again asked the Department of the Interior to investigate our tribal origin and history. This time Dr. Swanton of the Bureau of Ethnology concluded that our people were descendants of the Cheraw Tribe and recommended that federal assistance be given us. Incidentally, the Department of Interior recorded oral tradition of our tribe in this investigation indicating that Randall Locklear, another one of my ancestors, was one of the last speakers of an Indian language among our people. But this bill failed also.

After the passage of the Wheeler-Howard Act, our people shifted their efforts from Congress to the Department of the Interior. In 1935, Assistant Solicitor Felix Cohen described in a written opinion a plan for allowing the Indians of Robeson County to organize under a constitution. Tribal leaders immediately submitted such a proposal to Interior and Commissioner Collier sent an Indian agent to Robeson County to work out a plan for land resettlement so that a reservation might be created for qualified half-bloods. The Indian agent reported in 1935 that he had met with approximately 4,000 members of the Indian community and found strong support for the idea. In his words:

> "It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision. They hailed with joy the

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> offer of the government; many of the old people could not restrain their feelings, -- tears filled many eyes and flowed down furrowed cheeks. We must confess to the fact that our own feelings were deeply touched as the old people expressed so deep a longing to have a piece of land on which they could live in peace without fear of ejectment by a landlord."

The agent concluded, "It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them." However, justice did not come that time either. The plan was contingent upon certification of Indians in the county as half or more Indian blood. Initially, Assistant Commissioner Zimmerman and Assistant Solicitor Cohen had thought that Indian school enrollment records, other state records and oral tradition would all be used in this process. But in the end, the determinations were made based solely on physical measurements and features, e.g., body measurements, skin pigmentation, and facial features, which have since been discredited as having any scientific basis. This process resulted in the designation of only a few individuals as half-blood Indian and rejection of many others; in many cases people who were rejected were full brothers or sisters of people who were certified. Thus, this effort failed.

In the early 1950's, the tribe once again looked to legislation as the answer. After obtaining state legislation in 1953 renaming the tribe Lumbee, the tribe sought federal recognition legislation. In 1956, Congress did pass the Lumbee Act, designating the Indians in Robeson and adjoining counties as Lumbees. But at the request of the Department of the Interior

the bill was amended before enactment to provide that Lumbees could not receive services as Indians. Thus, we failed once again because of the intervention of the Department of the Interior.

Our latest effort began about eight years ago after the Department of the Interior promulgated regulations on recognition. In December 1987, the tribe filed a fully documented petition for federal acknowledgment. Now we are told that even though the Department might conclude that we are entitled to federal recognition, the Department may not be able to extend services to our people because of the 1956 Lumbee Act.

Enough is enough. Our people have been down this road with the Department of the Interior for one hundred years now. Every time legislation was introduced to recognize us, the Department was asked to investigate our history and community. Each time the Department acknowledged the existence of an Indian community, but opposed the bill because money was too short. Now the Department says again that services may be unavailable, but that they should be allowed to study our history and community once more. How much do our people have to take? How many times does the Department of the Interior have to investigate our history? How long will our people be denied because of bureaucratic prerogative?

There can be no serious doubt that the Lumbee people are an Indian community with a strong sense of tribalism. For our people, the world is divided between Lumbees and others. Every

Lumbee child is raised by an extended Lumbee family and very nearly all Lumbees' contacts are with other Lumbees. As a child, I attended all Indian schools and churches. Even in intra-mural sports competitions, we competed among themselves only. We were not allowed to participate in statewide intramural competition until after World War II. I never even met anybody who was not Lumbee until I was twenty years old and enlisted in the Army in 1943. When we did venture outside our own community, we faced open discrimination. I remember very well the signs designating separate white, colored, and Indian facilities in all towns surrounding the Indian community. The signs have come down, but the anti-Indian feeling remains. When I applied to graduate school at the University of North Carolina in 1946, I was denied admission because I am Indian. Every other Lumbee can tell stories of discrimination he or she personally faced because of being Indian. Just like all other Indian people, we have paid a dear price for being Indian. Other Indian people recognize the similarity in our experiences and many of them support this bill. We are gratified by that support. You will hear from some of them later today and I have attached letters of support from others who could not be here today.

Despite the high price for being Indian, we have always insisted upon our Indianess. And we have always fought to maintain our independence as an Indian people, even without federal recognition. The Civil War period is a good example. During the Civil War, the North Carolina Home Guard began

conscripting Indian people into service. Indians resisted and a band of Indian fighters led by Henry Berry Lowrie emerged. Lowrie and his band waged guerrilla war against the Home Guard for years. The Lowrie Band was able to escape capture only because the Indian community protected them. Henry Berry became and still is a legend among our people.

Control over education of our children is another good example of Lumbee independence. As I stated earlier, the State of North Carolina established a school system exclusively for our children in 1885 and authorized our people to control admission into those schools. In 1913, the State Attorney General's office said that the Robeson County Board of Education had the authority to overrule a decision of the Indian school enrollment committee as to eligibility to attend an Indian school. In 1919, the Lumbees succeeded in overruling that opinion through an act of the state legislature giving the committees, composed solely of Lumbees, exclusive authority to rule on enrollment in Indian schools.

In 1958, the Lumbees responded to what we saw as a direct threat to our people from the Ku Klux Klan. That year the Klan had already held two cross-burnings directed at Lumbees and announced a rally to be held in Maxton, a town with many Lumbee residents. Tribal members warned against the rally, but the Klan persisted. When the Klansmen gathered, they were quickly surrounded by several hundred Lumbees who drove the Klan from the area. This story is often retold in our community as part of our

tradition of protecting our own.

Most recently, one of our community leaders, Julian T. Pierce, was murdered on the eve of his election as the first Indian Superior Court Judge in the county. The campaign was polarized along racial lines and our people saw Julian's death as a challenge to our growing political strength. Our people learned shortly before the scheduled election than Julian's name would still be on the ballot despite his death. We organized to get out the Indian vote and managed to elect Julian with 55% of the vote, even though he is no longer with us to serve.

We are a proud and close people with a history of taking care of our own. We draw our strength from our land and from each other. Regardless of where a Lumbee may reside, home is always Robeson County. And when two Lumbees meet for the first time, the first question asked is who are your people, i.e. your family lines. All Lumbees know their family history three generations back and with a little discussion any two Lumbees can connect themselves either by direct kinship or marriage. These bonds are the ties that have enabled us to survive as a tribe even without federal recognition.

But as the last hundred years shows, our people yearn for federal recognition. It is important to us that the federal government formally acknowledge what we have paid such a high price to maintain -- tribal existence. And federal recognition would give us the legal status necessary to preserve our unique institutions, such as Indian schools, that are key to our

survival as a people. The time has come for the United States to acknowledge the fact that the Lumbee people are and have always been an Indian tribe. This is the truth of the Lumbee people. It is a truth that North Carolina has long acknowledged. It is a truth that other Indian people and experts on Indian history accept. And it is a truth that the Department of the Interior has known for one hundred years. As my mother always told me, "Truth crushed to earth shall rise again." I firmly believe today that the truth of the Lumbee people is rising as surely as the sun in the east -- after all His justice cannot sleep forever.

On behalf of the Lumbee people, I thank the committee for the opportunity to share our story with you and urge the Committee to act favorably on the Lumbee recognition bill.

STATEMENT OF RUTH LOCKLEAR, DIRECTOR, LUMBEE ENROLLMENT OFFICE
ON S. 2672, BEFORE THE UNITED STATES SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
August 12, 1988

My name is Ruth Locklear and I have been Director of the Lumbee Tribe's enrollment office since 1985. This office was established in 1988 for the purpose of addressing the requirement of the recognition regulations that a petitioning Indian group submit a list of all known current members along with a petition for federal acknowledgment. See 25 C.F.R. section 83.7(e). The L.R.D.A. (Lumbee Regional Development Association) Board of Directors, which was designated as the interim tribal council for purpose of recognition by vote of the Lumbee people, adopted membership criteria and established an enrollment process. In the case of the membership criteria, the Board simply reduced to writing the informal membership criteria always used by the Lumbee people. The enrollment office processes applications for enrollment based on these decisions of the Board. When the tribe's petition for federal acknowledgment was filed in December 1987, it was accompanied by a complete list of all known members prepared by the enrollment office.

Lumbee membership criteria

A copy of the complete membership criteria as adopted by the L.R.D.A. Board of Directors is attached to this statement. Briefly, the criteria first require that an individual trace descent from an individual appearing on specified documents which comprise the tribe's base roll. The base roll documents include Indian school records, church records, federal census data, and historic lists of tribal members, such as those who signed

petitions for assistance to North Carolina and the United States, among others. The criteria state that the persons appearing on those base roll documents will be deemed to be full blood Lumbees, although there is no blood quantum requirement for tribal membership. However, blood quantum information is needed for other purposes. For example, Michigan, where a number of Lumbees reside, waives tuition at its institutions of higher learning for quarter blood Indians. The second principal membership requirement is that an individual maintain tribal relations.

Enrollment process

Tribal membership is a voluntary decision on the part of the individual. Those desiring tribal membership must apply for it, submit a copy of their birth certificate, provide evidence of descent from the base roll, and agree in writing to tribal membership. The intake department of the enrollment office screens all applications to insure that an application is complete. They also work with the applicant to obtain birth and death certificates, and other information to confirm lineage. The certification department receives the complete application and, working with tribal genealogists, determines eligibility for enrollment. If descent of an applicant is fully documented by birth and death records from an individual on the base roll, then the applicant is enrolled by the processing department.

In 1985, the L.R.D.A. Board appointed an Elders Review Committee, composed of tribal people with great knowledge about our people's kinship. If there is any question as to eligibility

that the enrollment staff cannot resolve, then the Elders Committee passes on it. As staff knowledge of relationships among members increased, it has relied less and less on review by the Elders Committee to determine eligibility. However, the Elders Committee has the primary responsibility for determining whether tribal contacts are sufficient for a person who resides outside Robeson and adjoining counties to maintain membership.

Membership statistics

Applications for enrollment have dropped sharply in the last few months and we believe that most tribal members who wish to enroll have already done so. As of August 5, 1988, the official enrolled population of the Lumbee Tribe was 35,921. Because there are some applications still being processed, the final enrollment figure will be slightly but not significantly higher.

We estimate that out of the total enrollment, 98% of the tribal members reside in Robeson and adjoining counties, North Carolina. Approximately 5% reside elsewhere in North Carolina, primarily urban areas. Another 2% reside in Detroit, Michigan, 2% in Baltimore, Maryland, and the final 1% elsewhere in the United States.

The work of the enrollment office has been done meticulously, with documentary confirmation of descent from the base roll for 99% of our membership. In a few instances where documentation confirming descent was not available, the Elders Committee has determined the individual to be eligible. We believe we have produced a very sound roll as a result and we are quite proud of it.

A P P R O V E D

LUMBEE TRIBAL MEMBERSHIP CRITERIA

As Amended by LRDA Board of Directors

June 27, 1988

SECTION I: Eligibility for Lumbee Tribal Membership

Tribal membership of the Lumbee shall consist of living lineal or natural descendants of all persons enumerated as Indian on the following documents;

(1) 1900 and/or 1910 Federal Census of Robeson County, North Carolina

(2) 1900 and/or 1910 Federal Census of Bladen County, North Carolina

(3) 1900 and/or 1910 Federal Census of Richmond County, North Carolina

(4) 1900 and/or 1910 Federal Census of Cumberland County, North Carolina

(5) 1900 and/or 1910 Federal Census of Scotland County, North Carolina

(6) 1900 Federal Census of Marion County, South Carolina

(7) 1910 Federal Census of Dillon County, South Carolina

(8) Robeson County, North Carolina Taxable Records from 1890 to 1910

(9) Croatan School Attendance list of O.R. Sampson from 1891 to 1896

(10) Croatan Petitioners List of 1888

(11) Croatan School Committee List of 1900

(12) Deep Branch Church Roll of Ladies 1882 and the Male Members as mentioned in the minutes of the Deep Branch Church between December 1882 - May 23, 1986; and

(13) Minutes of the Lumbee Elders Review Committee 1985 to 1987. The Lumbee Elders Review Committee is appointed by the LRDA Board of Directors with authority to pass/reject tribal membership applicants whose ancestors do not appear on documents listed in item 1 through 12, such ancestors being missed by Census Enumerators in 1900 and/or 1910 or misclassified as to Race.

SECTION II: Adoption

The Lumbee Regional Development Association Board of Directors shall have the power to pass resolutions or ordinances governing adoption until such time a Lumbee Tribal Council is elected by the General Council providing that the no non-Indian person shall be enrolled or adopted as a tribal member of the Lumbee Tribe."

SECTION III: Loss of Membership

The tribe reserves the right to deny membership to applicants who are otherwise eligible for tribal membership under Section I and Section II.

(1) Applicants for Lumbee tribal membership who do not maintain social ties to the tribe will be excluded from tribal membership unless such applicants can provide evidence that he/she is recommended for Lumbee tribal membership from an Indian Organization in good standing with the Lumbee and providing such applications be approved for enrollment by the Lumbee Elders Review Committee.

SECTION IV: Restoration of Tribal Membership

Members who voluntarily withdraw their tribal membership may be restated upon written request to the Tribe. Restatement as members will be effective six months from the date of the written request.

(1) Any subsequent withdrawal of tribal membership shall be final disenrollment from the Tribe and no further opportunity will be provided for restatement or restoration of membership.

(2) Children under the age of 18 whose membership has been withdrawn by parent(s) shall be immediately restored to tribal membership upon request after reaching the age of 18 or older.

SECTION V : Blood Quantum

For the purpose of computing Lumbee blood quantum, those individuals so named on the documents in Section I are hereby declared as full-blood (4/4) Lumbee.

TESTIMONY OF JONATHAN L. TAYLOR, PRINCIPAL CHIEF

Mr. Chairman and Distinguished Committee Members, I am Jonathan L. Taylor, Principal Chief of the Eastern Band of Cherokee Indians of North Carolina. I wish to thank you for the opportunity of appearing before you today.

Our reservation is located in the western part of the state and is directly adjacent to the Great Smoky Mountains National Park. We have approximately 10,000 enrolled members. Our reservation consists of approximately 56,000 acres of beautiful mountainous land.

On behalf of the the Eastern Band of Cherokee Indians I can certainly attest to the successful working relationship we have always had with the Congress of the United States. You have responded to our needs and concerns. For that, Mr. Chairman, we are grateful. The economic growth of the Cherokee Indian Reservation is in great part a result of the successful working relationship the Eastern Band of Cherokee Indians have shared with the Congress of the United States.

The Eastern Band of Cherokee Indians oppose the enactment of S. 2672, a bill introduced on July 29, 1988 to provide Federal recognition for the Lumbee Indians of North Carolina.

The Federal status of the Lumbee Indians of North Carolina as a tribe has been previously considered by Congress and on more than one occasion.[1] In light of the specific decisions of previous Congresses, as recently as 1974, to not grant recognition and to not confer federal benefits to the Lumbee Indians, there is no sound basis for Congress to alter its prior action while administrative review of a petition for Federal recognition of the Lumbee is pending.

The Lumbee Indians of North Carolina were not known by that name until 1953,[2] when the General Assembly of North Carolina officially recognized the "Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County and claiming joint descent from remnants of early Colonists and certain tribes of Indians originally inhabiting the coastal

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1. See Act of June 7, 1956, Pub. L. 84-579, 70 Stat. 254; H.R. 12216 (93rd Cong., 2d Sess.).

2. See North Carolina Session Laws for 1953, ch 875; N.C.G.S. §71A-3.

regions of North Carolina." Prior to 1953 these same people had been officially known under several other names. In 1885 the North Carolina General Assembly had identified these persons as "Croatan Indians" and in the early part of the twentieth century had referred to them as "Indians of Robeson County" and also as "Cherokee Indians of Robeson County."[3]

In 1956 Congress enacted legislation for the first time concerning the Lumbee Indians of North Carolina. In the Act of June 7, 1956 Congress legislatively approved that they "be known and designated as Lumbee Indians of North Carolina." However, Congress explicitly limited the consequences of such recognition with the following language.

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

This exclusionary language was added to the original bill as an amendment by the Committee on Interior and Insular Affairs "to clearly indicate that the Lumbee Indians will not be eligible for any services provided through the Bureau of Indian Affairs to other Indians." The Committee acknowledged that the purpose of the bill was essentially to recognize the adoption of the name "Lumbee Indians" in preference to "Cherokee Indians of Robeson County" as a result of a 1951 election by the Robeson County Indians.[4]

In the 93rd Congress, H.R. 12216 was introduced for the purpose of amending the 1956 Act. We are attaching to our testimony a copy of House Report 93-1394 as reported from this

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3. See North Carolina Session Laws for 1885 (ch. 51), 1905 (Sec. 4168); 1911 (ch. 215); 1913 (ch. 123); N.C.G.S. §71A-1&2.

4. See Senate Report No. 2012 (to accompany H.R. 4656, enacted as Act of June 7, 1956.] This was also acknowledged in a dialogue on the floor of the House by the sponsor of the bill. See 102 Cong. Rec. 2900 (1956). The Pertinent portion of this dialogue is also set forth in Maynor v. Morton, 510 F.2d 1254, 1258 n. 14 (1975)

Committee and ask that it be made part of the hearing record on this bill. The intent of H.R. 12216 "was to clarify the eligibility of the Lumbee Indians for federal Indian programs" and for other purposes. As referenced above, the 1956 Lumbee Act was basically intended to clarify the name of the group of Indians living in Robeson County. The 1956 Act also specifically indicated that Lumbees were not to be eligible for federal programs designed for federally recognized tribes. This provision conflicted with the fact that the Secretary of the Interior had in 1938 determined that there were 22 individual Lumbee Indians of one-half blood or more who should be eligible for federal funding pursuant to the provisions of the Indian Reorganization Act (IRA). Federal agencies were apparently unsure whether they could serve the 22 Indians recognized under the IRA or whether the 1956 language prohibited service. There also was uncertainty as to whether the 1956 legislation prohibited service normally made available to non-federally recognized Indians.

To clarify these issues, Congressman Rose introduced H.R. 12216 in 1974. This bill specifically stipulated that:

> "Nothing in this Act shall make such Indians-
>
> (a) eligible for any benefits or services provided by the United States for Indians based on the Federal recognition of such Indians; or
> (b) subject to the restrictions of any Federal laws, or liable under any criminal laws, relating solely to Indians on Federal reservations; except such Indians shall be eligible for all Federal benefits and services for which other non-federally recognized Indian tribes are or may hereafter become eligible. (emphasis added)

The report accompanying the 1974 legislation stated that, "The majority of the [Lumbee] Indians have no desire to be recognized for present BIA services." The report further stated:

> The bill will not make the Lumbee Indians eligible for BIA services as a tribe since there is no trust relationship between the United States and this group, there is no tribal government and there are no tribal rolls to determine blood quantum.

In commenting on HR 12216, the Interior Department stated:

The Lumbees do not own common lands suitable for a reservation; they are not a cohesive, identifiable ethnic group; they have no historical relationship with the United States Government. Thus, there is no basis for Federal recognition of these people.

The Federal Courts have also concluded that Congressional intent has been clear on this question. In Maynor v. Morton, 510 F. 2d 1254 (D.C. Dir. 1975), the Court specifically noted that prior to 1956 the 40,000 Indians in and around Robeson County "had no tribal name." The Court held that the individual Indian plaintiff (who was more than one-half Indian blood) was entitled to Federal recognition under the 1934 Indian Reorganization Act but that relative to the Lumbees as a tribe the Court concluded that "Congress was very careful not to confer by this legislation any special benefits on these people so designated as Lumbee Indians.[5]

Prior to the introduction of S. 2672, the Lumbee Indians of North Carolina filed a formal petition for federal recognition with the Bureau of Indian Affairs.[6] They now seek to justify legislative action because of the "administrative burden and costs" of processing their petition together with assertions that a "backlog" of petitions will delay active consideration by the BIA until 1993.

These grounds are not compelling reasons to circumvent the Federal administrative process established solely to determine the merits of requests for federal recognition by groups such as the North Carolina Lumbee. These procedures were established in 1978 and provide reasonable standards and processes to carefully consider the claims of "those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes."[7] The existing regulations were also adopted

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5. Id. at 1258.

6. In December 1987 the Lumbee Tribe of North Carolina filed a detailed petition of more than 400 pages with the BIA in accordance with 25 CFR, Part 83.

7. 25 CFR Section 83.2 (1988).

after extensive input from representatives of recognized and non-recognized tribes and Indian organizations. The National Congress of American Indians held a special conference in March of 1978 on the issue of recognition and called for the establishment of:

> A valid and consistent set of criteria applied to every group which petitions for recognition. The criteria must be based on ethnological, historical, legal and political evidence.

The Congressionally established American Indian Policy Review Commission dedicated an entire Task Force to the issue of how the United States should deal with non-federally recognized tribes. The Commission recommended "the establishment of a firm legal foundation for the establishment and recognition of tribal relationships with the United States"; the adoption of "[a] valid and consistent set of factors applied to every Indian tribal group which seeks recognition" and the establishment of a special office with functions including the determination of eligibility of a petitioning tribe. Pursuant to pressure from tribes and from the Congress, the BIA adopted the existing regulations in the fall of 1978 and set up a special office of Federal Acknowledgment to process petitions.

While it is true that review of such petitions is thorough and time consuming, the assertion that the BIA will delay "active consideration of the Lumbee petition until 1993" is not necessarily accurate. Since this procedure has been established by the BIA, some 110 petitions for recognition have been received, almost half of which were merely letters, without supporting documentation. To date, 7 tribes have been acknowledged by the BIA through this process and 12 have been denied acknowledgement. Four other petitions have been resolved by other means because they involved tribes which had previously been "terminated" by Congress and required "restoration" rather than recognition. Four petitions are presently under active consideration by BIA with 26 other petitions having been submitted with documentation.

It would be inappropriate for Congress to short-circuit the administrative process of evaluation and review, particularly in this instance where the petitioning Indian group has a clear history of federal legislative and judicial non-recognition. If ever a recognition claim cried out for a careful, thorough review of the basis for federal tribal recognition, this is it. Congress should not lightly accept the conclusion presented by H.R. 5042 but should defer to the deliberative review process, which will Provide a "measured approach to a complex legal matter."

Finally, Congress should not enact S. 2672 without careful consideration of the consequences of passage. Congress has generally not extended legislative recognition of Indian tribes in recent years, except in instances where such measures were legally appropriate or necessary. Such legislation was appropriate, for example, to resolve extensive and unsettling land claims by eastern Indians[8] and to "restore" federal status to tribes that had been terminated.[9] No such compelling circumstances exist for the North Carolina Lumbees and Congress should allow the administrative petition process to be completed before considering any recognition legislation.

Furthermore, Congress should give consideration to the extensive federal financial commitment that passage of this bill will require. The Lumbees claim membership of over 35,000 people in Robeson and adjoining counties and another five to ten thousand members in Baltimore, Maryland. This would make them one of the largest tribes in the United States. If the federal government were to provide the same levels of services to the Lumbees as other tribes receive, the expenditure just for the Lumbees in the Robeson County area would be well in excess of $100 million

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8. See Rhode Island Indians Claims Settlement Act, Pub.L. 95-395, 92 Stat. 813, 25 U.S.C. §1701 (1978); Maine Indian Claims Settlement Act, Pub.L. 96-420, 94 Stat. 1785, 25 U.S.C. §1721 (1980).

9. See Menominee Restoration Act, Pub. L. 93-197, 87 Stat. 770, 25 U.S.C. §903 (1973); Cow Creek Band of Umpqua Tribe of Indians Distribution Act, Pub. L. 97-391, 96 Stat. 1960 (1982), amended, Pub. L. 100-139, 101 Stat. 827 (1987), 25 U.S.C. §712; Grande Ronde Restoration Act, Pub. L. 98-165, 97 Stat. 1064, 25 U.S.C. §713 (1983); Coos, Lower Umpqua and Suislaw Restoration Act, Pub. L. 98-481, 98 Stat. 2250, 25 U.S.C. §714 (1984); Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. 100-89, 101 Stat. 669, 25 U.S.C. §§731, 1300g (1987).

annually. We appreciate the fact that Section 4 (b) of S. 2672 calls for a separate budget for the Lumbees, but we are concerned about how this type of spending would effect future BIA and IHS budget request for those tribes presently receiving service.

Please do not interpret my remarks to indicate that the size of a petitioning Indian group should have an effect on whether or not they should be recognized. We feel that if a group can meet with established criteria they should be recognized regardless of size and the federal government is going to have to fulfill its legal responsibilities to such a recognized tribe. What I am saying is that the size of the Lumbee group is yet another reason to make sure that they can meet the existing criteria. This bill will circumvent those criteria and as such is bad public policy.

In 1974 and 1988 the Eastern Band of Cherokee Indians passed resolutions in Tribal Council stating that they would oppose any Indian group becoming recognized as a federal Indian tribe until they were able to meet criteria for Indian tribal status set by the Bureau of Indian Affairs. Conversely, if the Lumbees, like any other petitioning group, can meet the established standards and become recognized we will support them. We feel that the Lumbee's should receive a decision from the BIA on their petition before Congress makes a legislative decision on recognizing them as a federal Indian Tribe.

The Eastern Band of Cherokee Indians are also concerned about S. 2672 because we do not see evidence that the Lumbees have a treaty relationship with the federal government; a trust relationship with the United States; a tribal language; a historical tribal land base, nor do they have an official enrollment record with the federal government.

Finally, let me just point out why we feel the federal government must proceed with great caution on the question of recognizing groups of Indians who ask for the establishment of a special relationship with the United States. I would point out to the Committee that we recently received a status report on petitions that have been filed for recognition with the BIA Federal Acknowledgment Office. That report lists no less than nine (9) petitioning groups from various parts of the country claiming to be some sort of a Cherokee tribe (including a group calling itself the Southeastern Cherokee Confederacy Incorporated!). It also includes (with some cross-over from the above)

eleven (11) petitioning groups in the state of North Carolina alone. Incidenetially the report lists three groups calling themselves Lumbees including one in California. Mr. Chairman, I can tell you without hesitation that there are not nine Cherokee tribes in this country nor are there eleven separate tribes in North Carolina or three Lumbee Tribes. We all know that a vast portion of these petitioners are what Indian people usually call "Wanabees" as in "Want to be" an Indian. Certainly some of the petitioning tribes are legitimate and will be recognized, but Indian leaders across the United States have always been concerned about the dimunition of tribal sovereignty and the integrity of the government-to-government relationship, which may be weakened if questionable groups are recognized and allowed to speak on behalf of the Indian people.

Let me quote to you from a speech given in his Presidential Address to the 32nd Annual NCAI Convention by NCAI President Mel Tonasket (who presently is Chairman of the Colville Tribe of Washington state):

> We must take a strong and intelligent stand on the issue of Indian recognition. The stand must emphasize the traditions, the culture and the language that our leaders, our tribes have fought to preserve. Our stand must address the issue of trust protection of our lands and resources, the authority of which may be diffused with indiscriminate and wide-scale recognition. Our stand must take into consideration the the diluting of already inadequate funds to serve an ever increasing population."
>
> But our stand must not be one of racism, although racial considerations are involved. Racism and bigotry are what we suffer from. Racism is never justified and completely indefensible.

Chairman Tonasket's words are as applicable today as they were over a decade ago and I concur with them. We have established a system at the BIA that is deliberative but I don't think that the Indian people of this country or the Congress would want it to be anything but deliberative. If this Committee feels the existing BIA Acknowledgment Office is understaffed and incapable of processing the petitions in a timely manner, then you should recommend that the appropriations be significantly

increased so that they can do the job that is expected. But we do ask that you let them do that job.

In closing, Mr. Chairman and Distinguished Members, I would like to extend my appreciation to you for providing me the opportunity to present my testimony. The most important part of our shared democratic heritage involves participation by people in forming the consensus by which we are governed. I am confident that this committee will consider all the legal and legislative issues that have been addressed. Again, Mr. Chairman, your patience and understanding of the concerns expressed by the Eastern Band of Cherokee Indians are greatly appreciated. We will continue to look forward to working with you in the future.

LUMBEE INDIANS OF NORTH CAROLINA

See Legislative History, p. 2715

CHAPTER 375—PUBLIC LAW 570

[H. R. 4656]

An Act relating to the Lumbee Indians of North Carolina.

WHEREAS many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; and

WHEREAS at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; and

WHEREAS by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and

WHEREAS these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

Sec. 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved June 7, 1956.

LUMBEE INDIANS OF NORTH CAROLINA

For text of Act see p. 807

Senate Report No. 2012, May 16, 1956 [To accompany H.R. 4656]
House Report No. 1654, Jan. 18, 1956 [To accompany H.R. 4656]

The Senate Report is set out.

Senate Report No. 2012

THE Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4656) relating to the Lumbee Indians of North Carolina, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

EXPLANATION OF THE BILL

If enacted, H.R. 4656 would permit about 4,000 Indians of mixed blood presently residing in Robeson and adjoining counties in North Carolina to become known and designated as the Lumbee Indians of North Carolina. For the most part, the individuals affected are farmers and businessmen and are residing along the Lumbee River. They stem from early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina.

Under this act, the affected persons would continue to enjoy all the rights, privileges, and immunities they presently have as citizens of the State of North Carolina and the United States. Likewise, as Lumbee Indians, they would continue to be subject to the same obligations and duties to the State of North Carolina and to the United States as they are at present. The committee has amended the bill to clearly indicate that the Lumbee Indians will not be eligible for any services provided through the Bureau of Indian Affairs to other Indians.

In 1951, by a margin of 2,169 to 35, the Robeson County Indians concerned voted to adopt the name of Lumbee Indians of North Carolina in preference to Cherokee Indians of Robeson County.

On April 20, 1953, a bill similar to H.R. 4656 passed the General Assembly of North Carolina.

The unfavorable report of the Department of the Interior dated August 3, 1955, is as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., August 3, 1955.

Hon. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

MY DEAR MR. ENGLE: Your committee has requested a report on H.R. 4656, a bill relating to the Lumbee Indians of North Carolina.

We recommend that the bill be not enacted.

The group of Indians who reside in Robeson and adjoining counties in North Carolina are not a segment of either the Eastern Band of Cherokee Indians of North Carolina or the Cherokee Nation of Oklahoma. The State of North Carolina in 1885 recognized the group as

Croatan Indians. In 1911 the word "Croatan" was dropped and the designation "Indians of Robeson County" was adopted by State law. Two years later the same people were designated "Cherokee Indians of Robeson County," with this limitation: "Neither this act nor any other act relating to the said 'Cherokee Indians of Robeson County' shall be construed so as to impose on said Indians any powers, privileges, rights, or immunities, or any limitations on their power to contract, heretofore enacted with reference the Eastern Band of Cherokee Indians" (North Carolina Laws of 1913, ch. 133, sec. 5).

The United States has entered into no treaty or agreement with the Indians of Robeson and adjoining counties, and it has recognized no obligation to furnish to them services that are furnished to the citizens of this country who are recognized by the Congress as Indians. We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department.

The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition. Except for the possibility of becoming entitled to Federal services as Indians, the position of this group of Indians would not be enhanced by enactment of this bill. In fact, as the bill refers to them in terms that are different from the terms of recognition accorded under State law, some confusion as to their status might result from its enactment.

If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

The Bureau of the Budget has advised us that there is no objection to the submission of this report.

Sincerely yours,

ORME LEWIS,
Assistant Secretary of the Interior.

The Committee on Interior and Insular Affairs recommends favorable enactment of H.R. 4656.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1394

AMENDING THE ACT RELATING TO THE LUMBEE INDIANS OF NORTH CAROLINA

OCTOBER 1, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 12216]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 12216) to amend the Act relating to the Lumbee Indians of North Carolina, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the preamble of the Act enttiled "An Act relating to the Lumbee Indians of North Carolina", approved June 7, 1956 (70 Stat. 254), is amended by striking out "Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and".

(b) Such Act of June 7, 1956 is further amended by:

(1) striking out the first section and inserting in lieu thereof the following:

"That the Indians who now reside in Robeson and adjoining counties of North Carolina, whose ancestors were originally found by the first white settlers on the Lumbee River in what is now Robeson County, North Carolina, and who claim descent from remnants of certain tribes of Indians originally inhabiting the coastal region of North Carolina, shall be, from and after the date of enactment of this Act, known and designated as Lumbee Indians of North Carolina, except as provided in Section 2 of this Act, and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States before the date of enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians—

"(a) eligible for any benefits or services provided by the United States for Indians based on Federal recognition of such Indians; or

"(b) subject to the restrictions of any Federal laws, or liable under any criminal laws, relating solely to Indians on Federal Indian reservations; except such Indians shall be eligible for all Federal benefits and services for which other non-federally recognized Indian tribes are or may hereafter become eligible."

(2) inserting the following new Section 2 and renumbering Section 2 as Section 3:

"SEC. 2. Any Indian who resides in Robeson or an adjoining county of North Carolina, who will have reached the age of 18 years on or before January 31, 1975, and who does not desire to be designated as a Lumbee Indian of North Carolina, must so elect by notifying the Secretary of the Interior on or before January 31, 1975. His election shall apply to all dependent members of his household who are less than eighteen years of age but shall not affect the choice of anyone else. Any such Indian who does not notify the Secretary by such date shall automatically be deemed a Lumbee Indian of North Carolina."

PURPOSE

The purpose of H.R. 12216, introduced by Mr. Rose, is to amend the Act of June 7, 1956 (70 Stat. 254–255) to clarify the eligibility of the Lumbee Indians for Federal Indian programs for which other non-Federally recognized tribes are eligible and to put the Lumbee Indians on the same level as such other non-recognized tribes in their relationship with the United States.

BACKGROUND

H.R. 12216 amends the Act of July 7, 1956 (70 Stat. 254) relating to the Lumbee Indians of North Carolina.

The Lumbee Indians, numbering about 40,000, are basically a rural agrarian people currently living in 18 communities throughout Robeson and adjoining counties in southeastern North Carolina. Robeson County is one of the poorest counties in North Carolina, and its population is divided about equally among blacks, whites, and Indians. These Indians have never had a reservation and have never received any services as a group from the Bureau of Indian Affairs (BIA). However, a few individuals have been granted Indian preference in the hiring practices of the BIA and the Indian Health Service. In addition, one or two individuals have gone to the Carlisle Indian School in Pennsylvania.

According to legend, the Lumbee Indians are a mixture of early white settlers and several tribes which were located in eastern North Carolina. Legend has it that the first English colony which settled at Roanoke Island in North Carolina merged with the Croatan Indians and never again communicated with the outside world. This group then moved south to what is now Robeson County. This is somewhat substantiated by the recurrence of family names from the roster of that "lost" colony among the Indians in Robeson County today, and by the fact that the first known contact with this group by the first white settlers of the region found them living in European-type houses, living in settled communities, tilling the soil, and speaking English.

In 1885, the North Carolina General Assembly named the Indians in Robeson and adjoining counties "Croatan Indians", but specifically pointed out that it did not declare them to, in fact, be Croatan Indians. In 1911, the law was amended to designate such Indians as "Indians

Robeson County." In 913, the General Assembly designated the group as "Cherokee Indians of Robeson County."

Between 1913 and 1953 the name "Siouan Indians" was used by some of the Indians in the area. In the 1930's there was an effort by a minority of the people to achieve Federal recognition for services of the BIA. The Secretary of the Interior dispatched a team of anthropologists and other specialists to Robeson County to determine the Indian blood quantum of the applicants. Since there had never been any tribal rolls, the experts had to rely on physical appearance and family histories augmented by blood typing. Some 209 people had submitted applications and apparently were tested by these experts. Twenty-two applications were recommended for submission to the Secretary. In 1938, the Secretary ruled that these 22 individuals should be considered for enrollment as persons of one-half or more Indian blood, and should be entitled to individual benefits established by the Indian Reorganization Act. However, these 22 people were to have no rights or priviliges in any Indian tribe. It is interesting that some of the full brothers and sisters of these individuals were not recommended to the Secretary for recognition. No action was taken to secure services for these 22 people.

In 1951, by a margin of 2,169 to 35, the Robeson County Indians voted to adopt the name of "Lumbee Indians of North Carolina" in preference to "Cherokee Indians of North Carolina." In 1953, the North Carolina General Assembly passed a bill designating the Indians in Robeson and adjoining counties as "Lumbee Indians of North Carolina."

The 84th Congress followed suit by designating the Robeson County Indians "Lumbee Indians." The House passed a bill similar to the North Carolina law, but the Senate attached as an amendment the language which H.R. 12216 proposes to strike.

The Lumbee Indians sought in 1956 only to settle, once and for all, the name of the group. The majority of the Indians have no desire to be recognized for present BIA services. However, the 22 people who were recognized by the Secretary in 1938, together with their siblings and descendants, do feel they have a right to such services. They feel they also have a right to organize under the Indian Reorganization Act. The Interior Department has pointed to the restrictive sentence in the 1956 Lumbee Act as cutting off any rights these individuals may have had prior to 1956. Two suits were filed to challenge this administrative decision. One suit in the Court of Claims was dismissed. In the other suit, which was filed in the District Court for the District of Columbia, the decision went against the Indians because of the restrictive language in the 1956 Act. The latter case is on appeal to the Circuit Court.

At present, there are programs and funds available to non-Federally recognized tribes through departments other than Interior. The Lumbee Indians want to be eligible for any of these programs for non-Federally recognized tribes. There have been some minor problems with the Departments because of the restrictive language of the Lumbee Act. H.R. 12216 will remove this cloud on Lumbee eligibility for these programs.

This bill will not make the Lumbee Indians eligible for BIA services as a tribe since there is no trust relationship between the United

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States and this group, there is no tribal government, and there are no tribal rolls to determine blood quantum.

Committee Amendment

The Committee adopted an amendment in the nature of a substitute. The amendment deletes a paragraph in the preamble of the 1956 Act relating to the Lumbee Indians of North Carolina (70 Stat. 254), which is deemed by the Act itself as legend and which is an unproven anthropological theory. Many Lumbee Indians find offensive this paragraph which traces "their origin to an admixture of colonial blood with certain coastal tribes of Indians." The amendment further deletes language in section 1 which refers to the above-mentioned joint descent from colonists and tribes.

The 1956 Act designated as Lumbee Indians of North Carolina those "Indians *now residing* in Robeson and adjoining counties of North Carolina, *originally found* by the first white settlers on the Lumbee River in Robeson County, *and* claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina," (emphasis added). Since the first white settlers, although unsuccessful in colonizing, came to North Carolina in the 1580's, one would have to be almost 400 years old to qualify as a Lumbee Indian under the Act. The amendment corrects this matter.

The clause, which H.R. 12216 deletes, is replaced in this amendment by langauge which makes the Lumbee Indians eligible for Federal benefits and services for which other non-Federally recognized tribes are eligible, but ineligible for benefits or services provided by the United States for Indians based on Federal recognition. It also excludes such Indians from restrictions and criminal laws relating to Indians on Federal Indian reservations. This provision is consistent with amendments suggested by the report of the Department of the Interior on H.R. 12216.

Section 2 of the amendment makes provisions for those Indians who do not desire to be designated Lumbee Indians of North Carolina and to specifically come under the restrictive provisions of the Act. In 1938, the Secretary of the Interior ruled that 22 individual Indians in Robeson County should be considered for enrollment as persons of one-half Indian blood and should be entitled to individual benefits established by the Indian Reorganization Act. Fourteen of these people are still living. No action has been taken since 1938 to secure services for them. The 1956 Act unilaterally cuts off any rights to services under the Indian Reorganization Act. Because of this, the remaining 14 people and their descendants do not want the Act to apply to them. Section 2 allows the 14 people and others to elect not to come under the Act and it protects the rights of the 14 under the Indian Reorganization Act, while it also allows the 30 to 40 thousand remaining Indians in Robeson and adjoining counties, who want to be designated as Lumbee Indians and come under the Act, to do so.

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The Committee wants to make it clear that the Secretary of the Interior is to give adequate notice to the residents of Robeson and adjoining counties as to the provisions of section 2 of the bill, as amended.

Cost

No appropriations are authorized under this legislation.

Committee Recommendations

The Committee on Interior and Insular Affairs, by voice vote, recommends that the bill, as amended, be enacted.

Departmental Reports

The favorable report of the Department of the Interior on H.R. 12216 is as follows:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 5, 1974.

Hon. James A. Haley,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to your request for the views of this Department on H.R. 12216, a bill "To amend the Act relating to the Lumbee Indians of North Carolina."

We recommend enactment of this bill, if amended as suggested herein.

H.R. 12216 would amend the Act of June 7, 1956 (70 Stat. 254), by striking language which renders the Lumbee Indians of North Carolina ineligible for Federal services performed for Indians because of their status as Indians and also renders Federal statutes affecting Indians because of their status as Indians inapplicable to the Lumbees.

The Act which this bill would amend provided that certain Indians residing in Robeson and adjoining counties in North Carolina were to be "known and designated" as Lumbee Indians and would continue to enjoy all rights, privileges, and immunities as citizens of the United States and North Carolina that they enjoyed before the date of enactment. The preamble to the Act ascribes these motives to the Lumbees: "these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history. . . ." (An analogous Act had already been passed by the North Carolina State Legislature, on August 20, 1953.) A full understanding of the ramifications of the 1956 Act and of this bill requires some historical background.

I. THE SITUATION BEFORE JUNE 7, 1956

The Bureau of Indian Affairs was first made aware of the existence of the Lumbee Indians in 1888, when a delegation of these people

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petitioned the Congress for such aid as it might see fit to confer. It is not known precisely in what manner the Congress responded to this petition, but no aid was forthcoming. The issue of the relationship between the United States and the Lumbees surfaced next in 1914, when a Senate Resolution (No. 410, June 30, 1914) directed the Secretary of the Interior to investigate the conditions and legal status of the Indians in Robeson and adjoining counties in North Carolina. A document called the McPherson report (Sen. Doc. 677, 63 Cong. 3rd Sess. (1915)) resulted. It concluded that these Indians' needs were most pressing in the area of education and that, although their grammar schools were on a par with other public schools in the area, Congress could appropriate funds, if it saw fit, for an agricultural and mechanical school since a good portion of the children were eager to learn at a higher level. The report did not recommend, however, that the Indians of these counties be recognized by the Federal Government as eligible for Federal Indian services because of their status as Indians. The Congress took no action to implement this report.

After enactment of the Indian Reorganization Act (IRA), 48 Stat. 984, which includes a provision defining Indian to include all persons of one-half or more Indian blood, there was some uncertainty as to the blood quantum of these Indians and the applicability to them of the IRA, as amended. The Bureau of Indian Affairs authorized an anthropologist, one Carl Seltzer, to determine whether or not there were persons of one-half or more Indian blood among the Lumbees. Based upon physical examinations of 209 applicants, Seltzer concluded that 22 persons met the blood quantum. Consequently, the Assistant Commissioner of Indian Affairs, William Zimmerman, sent a letter to each of the 22 successful applicants, dated December 12, 1938, stating that he was "entitled to benefits established by the Indian Reorganization Act" but that no other benefits were being established nor was tribal status being conferred. (Thus, the IRA benefits involved were tuition loans, loans for economic development, and Indian preference in Bureau of Indian Affairs employment.) No IRA benefits were ever secured for these 22 persons. Thus, the situation until 1956 was as follows: (1) no tribe composed of Indian persons from the named counties in North Carolina had ever been Federally recognized; (2) 22 persons from the area had been designated as possessing half or more Indian blood and therefore eligible for benefits under the IRA as individuals but had not received any such benefits.

II. THE ACT OF JUNE 7, 1956

In reporting on H.R. 4656, 84th Cong. 2nd Sess. (1956), this Department recommended against favorable action unless the bill were amended to make clear that the Indians designated as Lumbees in the bill would not thereby become eligible for the Indian benefits of the Bureau of Indian Affairs. A letter of the Department to the Chairman of the House Interior Committee, dated August 3, 1955 concluded:

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> We are * * * unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department.

The House chose not to meet the Department's objection. The Senate, however, adopted the amendment that is now the last sentence of the Act of June 7, 1956, viz.: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians."

This sentence in the Act has recently been the subject of a lawsuit by two of the twenty-two Lumbees admitted to the benefits of the IRA in 1938. In *Locklear* v. *Morton*, Civ. No. 337–73 in the United States District Court for the District of Columbia, plaintiffs sought to undo the effect of that sentence's unexceptionable language—*i.e.*, they seek to restore their entitlement to IRA benefits. The court granted a motion for summary judgment by the United States. This decision is being appealed.

If enacted in its present form, H.R. 12216 would appear to make the Lumbees a Federally recognized tribe. We cannot support such an action. The Lumbees do not own common land suitable for a reservation; they are not a cohesive, identifiable ethnic group; they have no historical relationship with the United States Government. Thus, there is no basis for Federal recognition of these people.

However, the 1956 Act did more than bar the Lumbees from Federal recognition as a tribe: it also made inapplicable to them all Federal statutes "which affect Indians because of their status as Indians". It is our understanding that certain Federal agencies, such as the Department of Health, Education, and Welfare and the Department of Labor, have programs for which non-Federally-recognized Indians are eligible. The Lumbees have been recognized as Indians by the State of North Carolina. So far as we know, only the Lumbees are recognized as Indians by their State but denied the benefits of Federal programs which do not entail Federal recognition. We believe that the Lumbees should be on a par with other Indians similarly situated—*i.e.*, other State-recognized Indians. In order to place the Lumbees on the same footing as other State-recognized Indians but at the same time preclude their obtaining Federal recognition, we recommend that the final period in the last line of H.R. 12216 be stricken and the following language be added:

> and by inserting in place thereof: Nothing in this Act shall authorize or direct that:
>
> (a) such Indians are eligible for services or assistance provided by the Secretary of the Interior to Federally recognized tribes;

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(b) such Indians are eligible for services or assistance provided by the Secretary of Health, Education, and Welfare pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended:

(c) Robeson and adjoining counties are 'Indian country' within the meaning of any Federal statute;

(d) such Indians are included in the definition of 'Indian' in any criminal statute of the United States or any statute of the United States which regulates contracting or trading with Indians:

(e) such Indians have title to land taken in trust for them by the United States or to obtain allotments of public domain land;

(f) such Indians may organize as a tribe or qualify as Indians under the Act of June 18, 1934 (48 Stat. 984).

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

CHANGES IN EXISTING LAW

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 7, 1956 (70 STAT. 254–255)

Whereas many Indians now living in Robeson and adjoining counties are descendants of that once large and prosperous tribe which occupied the lands along the Lumbee River at the time of the earliest white settlements in that section; and

Whereas at the time of their first contacts with the colonists, these Indians were a well-established and distinctive people living in European-type houses in settled towns and communities, owning slaves and livestock, tilling the soil, and practicing many of the arts and crafts of European civilization; and

[Whereas by reason of tribal legend, coupled with a distinctive appearance and manner of speech and the frequent recurrence among them of family names such as Oxendine, Locklear, Chavis, Drinkwater, Bullard, Lowery, Sampson, and others, also found on the roster of the earliest English settlements, these Indians may, with considerable show

of reason, trace their origin to an admixture of colonial blood with certain coastal tribes of Indians; and]

Whereas these people are naturally and understandably proud of their heritage, and desirous of establishing their social status and preserving their racial history: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.]

That the Indians who now reside in Robeson and adjoining counties of North Carolina, whose ancestors were originally found by the first white settlers on the Lumbee River in what is now Robeson County, North Carolina, and who claim descent from remnants of certain tribes of Indians originally inhabiting the coastal region of North Carolina, shall be, from and after the date of enactment of this Act, known and designated as Umbee Indians of North Carolina, except as provided in Section 2 of this Act, and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States before the date of enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians—

(a) eligible for any benefits or services provided by the United States for Indians based on Federal recognition of such Indians; or

(b) subject to the restrictions of any Federal laws, or liable under any criminal laws, relating solely to Indians on Federal Indian reservations;

except such Indians shall be eligible for all Federal benefits and services for which other non-federally recognized Indian tribes are or may hereafter become eligible.

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SEC. 2. Any Indian who resides in Robeson or an adjoining county of North Carolina, who will have reached the age of 18 years on or before January 31, 1975, and who does not desire to be designated as a Lumbee Indian of North Carolina, must so elect by notifying the Secretary of the Interior on or before January 31, 1975. His election shall apply to all dependent members of his household who are less than eighteen years of age but shall not affect the choice of anyone else. Any such Indian who does not notify the Secretary by such date shall automatically be deemed a Lumbee Indian of North Carolina.

[Sec. 2] Sec. 3. *All laws and parts of laws in conflict with this Act are hereby repealed.*

○

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Lawrence MAYNOR, Appellant,

v.

Rogers C. B. MORTON, Secretary, Department of the Interior.

No. 73-2109.

United States Court of Appeals, District of Columbia Circuit.

Argued 21 Nov. 1974.

Decided 4 April 1975.

Action was filed for declaratory judgment to establish plaintiff's eligibility for benefits under the Indian Reorga-

choice but to believe [the deceased's wife] d she had taken the stand and testified tha [the deceased] had killed their son.")

26. There is some force to the appellant's a gument that even if the evidence of Sewell's history might not have affected the jury's verdict as to guilt or innocence, it might have influenced the jury to consider a verdict find ing the appellant guilty of the lesser include offense of manslaughter. *See* United States v. Burks, 152 U.S.App.D.C. 284, 470 F.2d 42 (1972).

nization Act. The United States District Court for the District of Columbia, John H. Pratt, J., granted summary judgment to defendant, the Secretary of the Interior, and plaintiff appealed. The Court of Appeals, Wilkey, Circuit Judge, held that the Lumbee Act did not take away any rights conferred on any individuals by any previous legislation; and that where plaintiff in 1938 was certified by the Department of Interior as an Indian within the meaning of the Indian Reorganization Act, he remained eligible for benefits of said Act notwithstanding subsequent passage of the Lumbee Act, which granted the name "Lumbee Indian" to a group of Indians, including plaintiff, and declared that "Nothing in this Act shall make such Indians eligible for any services * * * because of their status as Indians."

Reversed and remanded with instructions.

1. Appeal and Error ⇐170(2)

Even assuming that there was any merit in contention that Indian Reorganization Act could not constitutionally confer benefits on nonreservation Indians, such contention would not be considered where it was raised for the first time on appeal. Indian Reorganization Act, § 1 et seq., 25 U.S.C.A. § 461 et seq.

2. Indians ⇐6

Provision in the Lumbee Act that "Nothing in this Act shall make such Indians eligible for any services * * * because of their status as Indians" did not manifest any intent by Congress to take away any rights conferred on any individuals by any previous legislation, but merely an intent to make sure that a simple statute granting the name "Lumbee Indian" to a group of Indians was not used in and of itself to acquire benefits from the United States government. Lumbee Act, 70 Stat. 254.

3. Indians ⇐6

Where plaintiff in 1938 was certified by the Department of Interior as an Indian within the meaning of the Indian Reorganization Act even though he did not live on a reservation and was not a member of a recognized tribe, he remained eligible for benefits of said Act notwithstanding subsequent passage of the Lumbee Act, which granted the name "Lumbee Indian" to a group of Indians, including plaintiff, and declared that "Nothing in this Act shall make such Indians eligible for any services * * * because of their status as Indians." Indian Reorganization Act, §§ 1 et seq., 19, 25 U.S.C.A. §§ 461 et seq., 479; Lumbee Act, 70 Stat. 254.

4. Statutes ⇐158

Repeal of statute by implication or inadvertence is not favored in the law.

Appeal from the United States District Court for the District of Columbia (D.C. Civil Action 337–73).

Thomas N. Tureen, Calais, Me., with whom L. Graeme Bell, III, Washington, D. C., was on the brief for appellant.

John J. Zimmerman, Atty., Dept. of Justice, with whom Wallace H. Johnson, Asst. Atty. Gen., Carl Strass and Anthony S. Borwick, Attys., Dept. of Justice, were on the brief for appellee. Edmund B. Clark, Washington, D. C., also entered an appearance for appellee.

Before DANAHER, Senior Circuit Judge, WILKEY, Circuit Judge, and JUSTICE,* United States District Court Judge for the Eastern District of Texas.

Opinion for the Court filed by Circuit Judge WILKEY.

WILKEY, Circuit Judge:

This is an appeal from an order granting summary judgment for the Secretary of the Interior and dismissing the complaint of appellant Maynor. Maynor filed an action for declaratory judgment under 28 U.S.C. §§ 1331 and 2201 to establish his eligibility for benefits under the Indian Reorganization Act (IRA).[1] In addition to the IRA, one other statute

* Sitting by designation pursuant to 28 U.S.C. § 292(d).

1. 25 U.S.C. § 461 et seq. (1970).

is involved, the so-called Lumbee Act of 7 June 1956.[2] Despite the Indian law and lore cited to us by the parties, we think the issue is simply a matter of statutory interpretation.[3] Finding that the District Court erred in granting summary judgment for the defendant Secretary, we reverse and remand to the District Court with instructions to enter the declaratory judgment sought by the plaintiff-appellant Maynor.

I. *Background Facts*

[1] Maynor is one of some 40,000 Indians who live in and around Robeson County in North Carolina. They are now known as the "Lumbee Indians," but prior to 1956 they had no tribal name. In 1934 the Indian Reorganization Act (IRA) was passed. The pertinent provision of this comprehensive Act is the clause defining the term "Indian":

> All persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, *and shall further include all other persons of one-half or more Indian blood.*[4]

Although the IRA was primarily designed for tribal Indians,[5] and neither Maynor nor his relatives had any tribal designation, organization, or reservation at that time, it is clear from the language of the statute that some benefits of the Act were also open to any nonreservation Indian who could prove that he possessed at least one-half Indian blood.[6] Among these benefits was the right to petition the Secretary to establish a reservation for such individuals, which, if granted, would afford them access to a wide range of federal Indian services (as members of a recognized Indian group on a reservation).[7]

Following enactment of the IRA in 1934, plaintiff Maynor and 208 other persons residing in Robeson County petitioned the Secretary for recognition as persons of one-half or more Indian blood. The Department of the Interior sent a team of anthropologists and other specialists to determine the quantum of Indian blood of each applicant. After extensive study, in 1938 a total of only 22 applications including Maynor's, were approved.

Maynor and the other 21 were informed by the Department that they were "entitled to benefits established by the Indian Reorganization Act. *Please note* that no other benefits are involved. These people do not obtain tribal status or any rights or privileges in any Indian

2. Pub.L.No. 84-570, 70 Stat. 254.

3. This makes unnecessary any consideration of the question whether the subsequent statute could lawfully have divested Maynor of any rights conferred on him by the IRA of 1934 and the Department of the Interior certification as an "Indian."

4. 25 U.S.C. § 479.

5. Only recently in Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974), the Supreme Court referred to "the sweeping Indian Reorganization Act of 1934," and stated that "the overriding purpose of that particular Act was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Id.* at 542, 94 S.Ct. at 2478.

6. We find singularly unpersuasive the Government's argument that the IRA cannot constitutionally confer benefits on non-reservation Indians. (Government Br. at 7-9.) Not only does this contention run counter to the position taken by the Secretary of the Interior in 1938 (see text accompanying note 8 *infra*), but at no point was it raised by the Department during its two-year consideration of the appellant's petition (see text accompanying note 11 *infra*) or by the Government in the District Court proceedings. Thus, even if we found merit in the argument, raised for the first time on appeal, we would not consider it in reaching our decision.

It should be noted that as little as one-quarter Indian blood suffices to confer many IRA benefits to persons living on a reservation.

7. This and other benefits available under the IRA to non-reservation Indians were first detailed in a memorandum, dated 8 April 1935, to the Commissioner of Indian Affairs from then Assistant Solicitor Felix S. Cohen, who later authored the treatise Federal Indian Law (1942). Appendix at 29-30.

tribe."[8] Apparently dissatisfied with the tedious (and only ten percent productive) method of securing Indian status by individual blood and lineage examination, another group of Robeson County Indians (not including plaintiff Maynor) attempted a legislative solution. The result was the Lumbee Act of 7 June 1956,[9] which provided that the Indians in Robeson and surrounding counties would be known as "Lumbee Indians." On the recommendation of the Department of the Interior, however, language was included in the Act which provided:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.[10]

From this qualifying clause arises the single problem of this lawsuit.

In Congress' consideration of the Lumbee Act of 1956 no notice was taken or mention made of the 22 individuals who had been certified in 1938 as Indians under the IRA of 1934. The Federal Government appears to have all but forgotten them when in 1971 the plaintiff Maynor and others of the group of 22 petitioned the Secretary of the Interior to establish a reservation for them as certified Indians. From the content of several letters issued by the Bureau of Indian Affairs,[11] it appears that their request somewhat disconcerted the Department. The ultimate answer of the Department of the Interior, however, was that the 22 individuals were not eligible for benefits under the IRA. This conclusion was based entirely on a legal opinion of the Deputy Solicitor, dated 28 November 1972, to the effect that the clause concerning eligibility for federal Indian services, which the Department had secured as an addition to the Lumbee Act of 1956, terminated the rights which the petitioners had obtained in 1938 by virtue of their certification as Indians of more than fifty percent blood.

II. *Statutory Interpretation*

[2] On the plain language of the statute, we think the Secretary and his Deputy Solicitor erred. The Interior-inspired clause says, "Nothing in this Act shall make such Indians eligible for any services . . . because of their status as Indians." To our minds the key phrase is "[n]othing in this Act." The Secretary argues:

> The meaning of the Lumbee Act language could not be more plain. The Lumbee Indians are to receive no special Indian benefits, the purpose of the legislation being solely to recognize one name for these people.[12]

True, the limited purpose of the legislation appears to be to designate this group of Indians as "Lumbee Indians"

8. Appendix at 20. Fn. 2.

9. The entire text of the Act reads:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after the ratification of this Act, be known and designated as Lumbee Indians of North Carolina and shall continue to enjoy all rights, privileges, and immunities enjoyed by them as citizens of the State of North Carolina and of the United States as they enjoyed before the enactment of this Act, and shall continue to be subject to all the obligations and duties of such citizens under the laws of the State of North Carolina and the United States. Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.
>
> Sec. 2. All laws and parts of laws in conflict with this Act are hereby repealed.

70 Stat. at 255.

10. 70 Stat. at 255.

11. Appendix at 33-38.

12. Government Br. at 18.

and recognize them as a specific group. Moreover, Congress was very careful not to confer *by this legislation* any special benefits on these people so designated as Lumbee Indians. But we do not see that Congress manifested any intention whatsoever to take away any rights conferred on any individuals by any *previous* legislation.

[3] Plaintiff Maynor is asking for a declaratory judgment of his rights under the Indian Reorganization Act of 1934, pursuant to which he was certified by the Department of the Interior as an Indian because extensive investigation had determined that he met the statutory definition of "Indian," whether he lived on a reservation or was a member of a tribe. In 1934 38 plaintiff Maynor was not a "Lumbee Indian," because the Lumbee Indians were not a legally recognized group. He was simply certified as an "Indian," and it is as such that he seeks a declaratory judgment of his rights.

There is nothing in the background of the Lumbee Act, in the debates, or in the committee reports which would indicate that Congress had any desire to take away any rights from persons such as appellant Maynor who may have been granted such rights by prior legislation. Congress was simply unaware of the existence of 22 persons in the Robeson County area certified by the Department of the Interior as Indians of more than fifty percent Indian blood under the IRA of 1934. Congress, being oblivious of these people and their rights, certainly cannot be supposed to have intended to deprive them of those rights without mention of the subject.

The whole purpose of this final clause of the one paragraph operative portion of the Lumbee Act was simply to leave the rights of the "Lumbee Indians" unchanged. This is the plain import of the Department of the Interior recommendation on the bill:

> If your committee should recommend the enaction of the bill, it should be amended to indicate clearly that it [the Act] does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.[13]

If 22 out of the 40,000 persons now known as Lumbee Indians had secured certain rights by special designation in 1938, there is no intent manifest either in the letter of the Department of the Interior or in the final language of the statute to alter those rights.[14]

[4] In the final analysis, the argument of the Secretary rests upon a re-

13. H.R.Rep.No. 1654, 84th Cong., 2d Sess. (1956), U.S.Code Cong. & Admin.News 1956, p. 2715.

14. This view is buttressed by the dialogue on the floor of the House between the sponsor of the bill, Representative Carlyle of North Carolina, and Representative Ford of Michigan:

> The SPEAKER. Is there objection to the present consideration of the bill?
>
> Mr. FORD. Mr. Speaker, reserving the right to object, I should like to ask the author of the bill, the gentleman from North Carolina, *whether* or not *this bill, if enacted,* would in any way whatsoever commit the Federal Government in the future to the furnishing of services or monetary sums?
>
> Mr. CARLYLE. Mr. Speaker, I am happy to say that *the bill* does not provide for that nor is it expected that *it* will cost the Government one penny.
>
> Mr. FORD. There is no obligation involved, as far as the Federal Government is concerned, if this proposed legislation is approved?
>
> Mr. CARLYLE. None whatsoever.
>
> Mr. FORD. *It simply provides for the change of the name?*
>
> Mr. CARLYLE. *That is all.*

102 Cong.Rec. 2900 (1956).

To explain the addition of the last clause the Senate Committee stated in its report, "The committee has amended the bill to clearly indicate that the Lumbee Indians will not be eligible for any services provided through the Bureau of Indian Affairs to other Indians." (S.Rep.No. 2012, 84th Cong., 2d Sess. (1956), U.S.Code Cong. & Admin.News 1956, p. 2715 This shorthand statement of the purpose of the amendment, of course, does not contain the introductory clause of the amending language, "Nothing in this Act shall make . . . ."

peal by implication, or inadvertence—a position decidedly not favored in the law. In rejecting its application here we find illumination in the recent opinion of Mr. Justice Blackmun in Morton v. Mancari,[15] a decision which was not available to the District Judge when he granted summary judgment for the defendant. There the question was whether the 1972 Equal Employment Opportunity Act repealed by implication the Indian preference of the Indian Reorganization Act of 1934. A three-judge District Court had held that the Indian preference was repealed, but the Supreme Court said,

> Appellees encounter head-on the "cardinal rule . . . that repeals by implication are not favored." [Cites] They and the District Court read the congressional silence as effectuating a repeal by implication. There is nothing in the legislative history, however, that indicates affirmatively any congressional intent to repeal the 1934 preference. . . .
>
> This is a prototypical case where an adjudication of repeal by implication is not appropriate. . . .
>
> In the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable. . . .
>
> . . . . . .
>
> The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. "When there are two acts upon the same subject, the rule is to give effect to both if possible . . . . The intention of the legislature to repeal 'must be clear and manifest.'"[16]

Here, as in *Mancari*, the Secretary of the Interior was not at liberty to pick and choose among Congressional enactments. If he had two Acts upon the same subject, he could have given effect to both, as we do here, by simply recognizing that whatever rights were acquired by plaintiff Maynor and the other 21—who were certified by the Department of the Interior in 1938 as "Indians" under the IRA of 1934—were not abrogated when in 1956 a group of plaintiff's neighbors secured legislative recognition for the entire group of "Lumbee Indians," with the proviso that this recognition in itself would not entitle them to any Indian benefits. Certainly no implication of a repeal of the certified Indian status of Maynor arises by such legislation conferring a tribal name on a group of North Carolina Indians, even if the group included the appellant.

The whole purpose of the clause, from whence arises the issue in this case, was simply to make sure that a simple statute granting the name "Lumbee Indian" to a group of Indians, which hitherto had not had such designation legally, was not used in and of itself to acquire benefits from the United States Government. Plaintiff here is not seeking a declaration of eligibility for any benefits by virtue of his being a "Lumbee Indian" under the 1956 Act. He predicates his claim to a declaration of rights on his certification by the same Department of the Interior in 1938 that he is an Indian of more than fifty percent blood, and therefore an Indian as defined in the IRA of 1934. It is under this Act of 1934 that he lays claim to whatever rights he might have. We think the plaintiff-appellant has made his case for declaratory judgment, and we therefore remand to the District Court for entry of a judgment in accordance therewith.

Reversed and remanded.

15. 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974).

16. *Id.* at 549 51, 94 S.Ct. at 2482.

PASSED

Cherokee Council House
Cherokee, North Carolina

FEB 5 1988
(date)

Resolution No. 116 (1988)

WHEREAS, a petition has been submitted to the The United South and Eastern Tribes, Inc. (USET) for that Indian organization to support a request for recognition of the Lumbee as a federal Indian tribe; and,

WHEREAS, both the Eastern Band of Cherokee Indians and USET has in the past opposed federal recognition of the Lumbeee on specific gounds; and,

WHEREAS, the Eastern Band memoralized its position on the federal recognition of any Indian group by specific objective standards in Resolution No. 216 (1974); and,

WHEREAS, the Eastern Band does reaffirm its consistent policy in this regard and requests USET not to support a request for federal recognition by Lumbee or any other Indian group until or unless they satisfy the previously established criteria.

NOW, THEREFORE, BE IT RESOLVED, by the Tribal Council of the Eastern Band of Cherokee Indians, in Annual Council assembled, with a quorum present, that The United South and Eastern Tribes, Inc. is hereby requested not to support any request for federal recognition for tribal status by Lumbee or any other group unless or until such group satisfies at least four of the following seven criteria for Indian tribal status:

(1) A history of entering treaties with the United States Government.
(2) Show enrollment with a federally recognized Indian tribe.
(3) Inclusion in the most recent BIA census.
(4) Substantial evidence of Indian language, history, foods, technology and religion.
(5) Recognition by national Indian tribal organizations to be a member of the root race or aborigine.
(6) Have a claim settled by or before the United States Claims Commission.
(7) Be an offspring of sufficient blood quantum recognized by the tribe, with proof of parents qualified under any four of the above.

Council House
Cherokee, N. C.

OCT 7 1974

Resolution No. 216, 1974

WHEREAS, the Eastern Band of Cherokee Indians have been made aware that a number of non-Indian groups have been attempting to gain federal recognition, and

WHEREAS, some of these groups have already submitted for, and received, federal funds specifically allocated for recognized Indian Tribes inspite of laws precluding such expenditures, and

WHEREAS, the Eastern Band of Cherokee Indians feel that specific criteria should be presented to the government to aid in the definiting of American Indian groups.

NOW THEREFORE BE IT RESOLVED that the Tribal Council of the Eastern Band of Cherokee Indians proposes that any four (4) of the following seven (7) criteria be accepted as certifying the claim to be American Indian:

(1) Treaties with the U. S. Government
(2) Enrollment in a federally recognized tribe

(3) Been included in the 1960 BIA Census
(4) Having sufficient evidence of Indian language, history, foods, technology and religion.
(5) Recognized by National Tribal Indian Organizations to be a member of the root race or aborigine.
(6) Having a claim settled by or before, the U. S. Claims Commission.

(7) Be an offspring of sufficient blood quantum recognized by the tribe, with proof of parents qualification under any four (4) of the above.

BE IT FURTHER RESOLVED that the Tribal Council of the Eastern Band of Cherokee Indians further authorizes and mandates, that John Crowe, Principal Chief, effect the distribution of this resolution containing these certifying criteria to any and all state and federal agencies contracting, funding, or negotiating with groups recognized as, or claiming to be Native American Indians.

STATEMENT OF HERMAN A. WILLIAMS, SR., CHAIRMAN, THE TULALUP TRIBES, WASHINGTON; DEE PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON; DARRELL WADENA, CHAIRMAN, WHITE EARTH RESERVATION TRIBAL COUNCIL, MINNESOTA; AND DELIA ANTONE, CHAIRMAN, AK-CHIN INDIAN COMMUNITY COUNCIL, ARIZONA

before the

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

on

S.2672 - LUMBEE RECOGNITION

August 12, 1988

We support the position of Jonathan L. Taylor, Principal Chief, Eastern Band of Cherokee Indians in opposition to enactment of S. 2672, proposed legislation that would circumvent the Federal Acknowledgement Project and confer federal recognition upon the Lumbee Indians of North Carolina.

This proposed legislation presents too many complex, unresolved issues to be rushed through Congress at the last minute. Indian tribes across the nation should be afforded the courtesy of sufficient time to address these issues.

The Federal Acknowledgement Project (FAP) has established certain objective criteria that must be met. It is the obligation of the Lumbees to provide satisfactory factual evidence that they meet these criteria, just as other groups petitioning the Secretary of the Interior for recognition are required to do. We do not believe that subjective political judgements are a substitute for the FAP process - nor do Committee staff have the time, expertise or resources to subject the Lumbee evidence to critical analysis.

We are concerned with the precedent that may be established by this bill and its unfairness to other groups petitioning the Secretary for recognition and the more than 200 recognized tribes.

Other groups are required to meet the FAP criteria and submit their evidence. Is it fair to them to excuse the Lumbees from these requirements? Many tribes have petitioned for recognition at an earlier date and are required to wait their turn. The Lumbees would be excused from waiting their turn.

Congress, the Executive Branch, and the federal

courts have recognized that the United States has a government-to-government relationship with Indian tribes and a trust obligation to them. If Congress creates Indian tribes at will, without meaningful criteria or substantial evidence that a group is in fact a tribe within the normal meaning of that term, then the meaning of the government-to-government relationship and the trust responsibility will be enormously weakened.

In light of the confusion generated by certain provisions of the 1956 Lumbee act as to whether or not this group may be eligible for consideration under FAP, we recommend that the Committee simply seek an amendment to the 1956 act expressly to qualify the Lumbees for eligibility under the FAP process.

We further recommend that this Committee respond to charges by various petitioning groups that FAP is understaffed by seeking increased funding to support additional staff for FAP.

If the Lumbees, or any other group petitioning for recognition under FAP, can meet the established standards, we will welcome them into the community of soverign, federally recognized tribes.

MASHANTUCKET PEQUOT TRIBAL COUNCIL

August 1, 1988

The Honorable Sam Gejdenson, Congressman
1410 Longworth House Office Building
Washington, D. C. 20515-0702

Dear Congressman Gejdenson:

The Mashantucket Pequot Indian Tribe supports the House passage of *H.R. 5042, The "Lumbee Recognition Bill"*. We understand that H.R. 5042 does as its title suggests - *It recognizes the Lumbee Indian Tribe of North Carolina*. We recognize that the Bureau of Indian Affairs has established administrative procedures for establishing that an American Indian group exists as an Indian Tribe *(at Title 25 CFR Part 83)*. But, we also recognize that special circumstances, in individual cases, can mitigate the effective utility of taking this route to Tribal acknowledgment established by these administrative procedures. *(For example, the federal recognition of the Mashantucket Pequot Tribe was accomplished through the legislative enacment of the Tribe's "Land Claim Settlement Act".)* In the case of the Lumbee Tribe's recognition, we now understand that the Solicitor's Office of the Department of Interior has (or will soon) issue an Opinion to the Assistant Secretary that concludes that the 1956 Federal enactment of the *"Lumbee Act"* precludes the Bureau of Indian Affairs from recognizing the Lumbee tribe through the administrative procedures established by Title 25 CFR 83. If the Bureau of Indian Affairs is precluded by the 1956 action of the United States Congress, then it seems only fair and correct that the current Congress should take the neccessary corrective action. Accordingly, we respectfully wish to urge your support for *H.R. 5042, The "Lumbee Recogintion Act"*.

Please feel free to contact me if you have any further questions, comments or suggestions in this regard.

Sincerely,

Richard A. Hayward, Chairman
Mashantucket Pequot Tribal Council

Box 160 · Indiantown Road · [illegible] 06339 · 203-536-2681

Poarch Band of Creek Indians

TRIBAL OFFICES
Route 3, Box 243-A ATMORE, ALABAMA 36502
TELEPHONE (205) 368-9136

August 16, 1988

Mr. Daniel Inouye, Chairman
Select Committee on Indian Affairs
SH-838 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Inouye:

The Poarch Creek Indians has enjoyed many years of friendship with the Lumbee Tribe of North Carolina. On July 14, 1988, H.R. 5042 was introduced to provide federal recognition for the Lumbee Indians. This initiative is a result of the Lumbees' years of effort to acquire acknowledgment as a federally recognized tribe.

While it has been the offical position of this Tribe that only those tribes who can meet the criteria of the federal acknowledgment process should be afforded government to government relations with the federal government, the Poarch Creek Indians concur with their friends that special consideration should be extended.

The Lumbees' extensive involvement over a long period of time in Indian affairs represent a compelling reason for Congress to consider expediting the recognition process. The size and cohesiveness of the group is another factor supporting special consideration.

Unfortunately, the Lumbees' situation is complicated by the disparity between the means and standards and procedures of federal agencies. The BIA has not enjoyed the resources to perform a timely and efficient job in evaluating petitions for federal recognition. It is not surprising that the Lumbees assert that the administrative burden and cost of processing their petition is extreme.

While the Poarch Creek Indians would caution Congress regarding other groups using legialative recognition as a vehicle for circumventing established administrative procedures, Congress should consider a special appropriation for the BIA to accelerate its review process. Additional measures ought to be examined by Congress to expedite the acknowledgment process for the Lumbees as well as other tribal groups.

We appreciate your continued efforts to address the multitude of problems which exist in Indian country. The concern of the Select Committee on Indian Affairs regarding this unique problem is greatly appreciated. If we can be of further assistance, please feel free to contact me.

Sincerely,

Eddie L. Tullis
Tribal Chairman

CIG/ELT/am

cc: Senator Howell T. Heflin
Senator Richard C. Shelby
Representative Sonny Callahan
Representative William L. Dickinson
Representative Bill Nichols
Representative Tom Bevill
Representative Ronnie G. Flippo
Representative Ben Erdreich
Representative Claude Harris
Lumbee Regional Development Assoc., Inc.

Quinault Indian Nation
POST OFFICE BOX 189 || TAHOLAH, WASHINGTON 98587 || TELEPHONE (206) 276-8211

August 22, 1988

The Honorable Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Inouye:

The Quinault Indian Nation supports serious Congressional considerations and enactment of S. 2672, the "Lumbee Recognition Act of 1988."

Under normal circumstances, the Quinault Nations's policy of Federal recognition of Indian Tribes has been to support the Federal acknowledgement process. We, in fact, provided written correspondence for the recent Senate Select Committee on Indian Affairs Oversight hearing on the Federal Acknowledgement Project encouraging expanded Federal support for this operation.

The Lumbee Tribal situation , however, requires special Congressional consideration. I do not doubt that the present Lumbee Tribe represents the descendants of American Indian people who originally inhabited rural North Carolina. State and Federal attempts to disperse, relocate, and destroy these people are historically documented as another sad chapter of this country's past. The Lumbee Tribes resistance and resilience against these overwhelming odds is remarkable.

I am concerned that the size of the Lumbee Tribal enrollment will become a key factor in Federal acknowledgement considerations. The financial commitment involved in the Federal acknowledgement of the Lumbee Indian people should rest with Congress rather than a timid bureaucracy. The realization in Section 4(a) provision of this impact on the Indian Affairs bureaucracy requiring specific additional appropriations to serve the Lumbee people is sensitive to the concerns of other tribes regarding further diminishment of limited resources.

Therefore, I support passage of S. 2672, the Lumbee Recognition Act.

Sincerely,

Joseph B. DeLaCruz
President

JBD/sbt

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)

OFFICERS
ROGER A. JOURDAIN, Chairman
ROYCE GRAVES SR., Secretary
BOBBY WHITEFEATHER, Treasurer

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DAN RAMSEY, JR.
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HAMMOND BEDEAU
ALLEN ENGLISH, JR.

ADVISORY COUNCIL
7 HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS, EDWARDS, BOSH
DULUTH, MINNESOTA

RED LAKE BAND of CHIPPEWA INDIANS

Phone 218/679-3341
RED LAKE, MINNESOTA 56671

August 10, 1988

The Honorable Daniel K. Inouye
United States Senate
Chairman, Senate Select Committee
on Indian Affairs
SH-722 Hart Senate Office Building
Washington, DC 20510-1102

Dear Senator Inouye:

The Red Lake Band of Chippewa Indians is fortunate to have retained its aboriginal lands and sovereignty and to have maintained its political relationship with the United States. We understand the hardship imposed by the lack of federal political recognition of the Lumbee Tribe, and believe it is time that this historical error be corrected. I write to express our support for the Lumbee Recognition Bill, S. 2672, which is scheduled for hearings before your Committee on August 12, 1988. This bill represents a fair resolution of complex legal and other issues and should be enacted by Congress.

We are all concerned that only those Indian groups deserving of the status are federally recognized. The Department of the Interior's regulations on recognition generally ensure that only genuine Indian tribes are recognized, but the situation of the Lumbee Tribe is unique. It appears that due to the 1956 Lumbee Act, the Department of the Interior cannot extend full recognition to the Lumbee Tribe. Nonetheless, the Lumbee Tribe has apparently fully documented its tribal existence under Interior regulations. Under the circumstances, legislative recognition of the Lumbee is the most efficient and sensible way to resolve the status of the Lumbee people.

The Lumbee Tribe has sought federal recognition for 100 years. It is an appropriate exercise of sovereignty for Indian tribes to judge for themselves whether to extend political recognition to each other. In the case of the Lumbee, many other Indian tribes have done so. It would trivialize and demean the

BEST AVAILABLE COPY

political relations among Indian tribes for Congress to do anything less. I urge the Committee to act quickly and favorably on the Lumbee Recognition Bill.

Sincerely yours,

Roger A. Jourdain, Chairman
Red Lake Band of Chippewa Indians

cc: The Honorable Rudy Boschwitz
The Honorable David Durenberger

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA
2450 SO. MUSKOGEE AVENUE, TAHLEQUAH, OKLAHOMA 74464

CHIEF
John Hair
VICE-CHIEF
Louie Griffin

SECRETARY
Austin Ketcher
TREASURER
John Ross, Jr.

September 2, 1988

Honorable Senator Daniel K. Inouye
United States Senate
Select Committee on Indian Affairs
Washington, D.C. 20510-6450

Re: S.2672, "Lumbee Recognition Act"

Dear Senator Inouye:

As Chief of the United Keetoowah Band of Cherokee Indian in Oklahoma, I would like to express my support for Senator Sanford's bill, S. 2672, to provide Federal recognition for the Lumbee Tribe of North Carolina. The well-being, sovereignty and dignity of such Indian communities have been ignored and degraded for far too long. The Lumbees have petitioned patiently for a century, to little avail, and Congress must hear them now, in the name of common decency.

It has come to my attention that, at the August 12, 1988 hearings on federal acknowledgement of the Lumbee Tribe of North Carolina, the Honorable Jonathan E. Taylor, Principal Chief of the Eastern Band of Cherokee Indians, gratuitously and erroneously stated that there were only two federally-recognized tribes of Cherokee Indians in the United States, that is, the Cherokee Nation of Oklahoma and the Eastern Band of Cherokee Indians. Since this patently erroneous statement was part of his oral comments and might otherwise become an uncorrected part of the hearing record, I respectfully request that a note, preferably containing the following pertinent information, be included in the hearing record.

The United Keetoowah Band of Cherokee Indians was recognized as a band of Indians residing in Oklahoma under the Act of August 10, 1946 (60 Stat. 976). The Band was subsequently incorporated under Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (46 Stat. 1967). The Band's Tribal Constitution and Bylaws and Corporate Charter were approved under congressional authority on October 3, 1950. The United Keetoowah Band of Cherokee Indians is a separate and distinct federally-recognized tribal entity organized under Section 3 of the Oklahoma Indian Welfare Act. They have all the rights and privileges secured to organized tribes under Section 5 of the Indian Reorganization Act. See Senate Report 79-978. The Bureau of Indian Affairs has not disputed the fact that the United Keetoowah Band is a viable

2--

and distinct federally recognized tribal body.

On behalf of the United Keetoowah Band of Cherokee Indians in Oklahoma, I wish to extend my appreciation for the opportunity to express support for the sovereignty of all Indian tribes.

Sincerely yours,

(Admin. Asst. for)

John Ross, Chief
United Keetoowah Band of
Cherokee Indians in Oklahoma

JR/lh

Alaska Native Coalition

Willie Kasayulie, Chairman

RESOLUTION

OF THE

ALASKA NATIVE COALITION

WHEREAS, The Alaska Native Coalition includes over 140 Native village tribes and other organizations throughout Alaska; and

WHEREAS, The Alaska Native Coalition believes that each tribe in the United States should stand on the same legal footing, receive comparable services and benefits, exercise comparable power and authority, be afforded comparable immunities and protections; and be accorded the same federal recognition of tribal status as all other tribes in the United States; and

WHEREAS, The Lumbee Tribe of North Carolina has been wrongfully denied its rightful status as a federally recognized tribe for over 200 years;

WHEREAS, The American principles of Justice and equality and the American policy supporting tribal self-government dictate that these long years of discrimination against the Lumbee Indians be halted forthwith;

NOW, THEREFORE, BE IT RESOLVED THAT,

Senators Ted Stevens and Frank Murkowski and Congressman Don Young as well as all other members of Congress are strongly urged and earnestly requested to support and pass S.2672 and S.5042, the Lumbee Recognition Act.

PASSED AND APPROVED this 1st day of September 1988.

Willie Kasayulie

Willie Kasayulie, Chairman
Alaska Native Coalition

Attested

Date: 9/6/88

Governors' Interstate Indian Council, inc.

Established 1949

The National Association of State Indian Commissions and Offices of Indian Affairs

RESOLUTION NO. 3

LUMBEE TRIBE OF NORTH CAROLINA

Whereas, the LUMBEE TRIBE OF NORTH CAROLINA submitted a petition for federal recognition to the federal acknowledgement branch of the United States Department of the Interior pursuant to 25 C.F.R., Part 83 on December 17, 1987; and

Whereas, Congressman Charles Rose introduced House Bill 5042 into the United States House of Representatives and Senator Terry Sanford introduced Senate Bill 2672 into the United States Senate for their consideration and passage into law; and

Whereas, the NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS, pursuant to North Carolina General statute § 143B-407, which states that the Commission will "...provide for official State recognition by the Commission of such groups; and to initiate procedures for their recognition by the federal government"; and

Whereas, the LUMBEE TRIBE has, since 1888, pursued federal recognition by the United States of America and has been recognized by the state of North Carolina since 1885 as a separate and viable Indian entity.

NOW, THEREFORE, BE IT RESOLVED by the Governors' Interstate Indian Council at its 39th Annual Meeting in Nashville, Tennessee that it does hereby support and endorse the efforts of the LUMBEE TRIBE to gain federal recognition.

Adopted August 12, 1988

Travis N. Parashonts
President

Ft. McDowell Mohave-Apache
Indian Community
P.O. Box 17779
Fountain Hills, Arizona 85268

RESOLUTION NO. Ft.McD# 88-19

WHEREAS, The Fort McDowell Indian Community, a federally recognized Indian Tribe, acknowledges the benefits of such recognition to its sovereignty and self determination; and

WHEREAS, The Tribal Council strongly supports the assertion of similar goals and purposes among all Indian people; and

WHEREAS, The Tribal Council has become aware of the struggles the Lumbee Tribe of North Carolina to achieve federal recognition and, with such recognition, obtain all appropriate federal benefits, privileges and immunities.

BE IT THEREFORE RESOLVED That the Tribal Council hereby supports the Lumbee Tribe in its efforts to obtain federal recognition as an Indian Tribe; and

BE IT FURTHER RESOLVED That the Tribal Council memorializes the Congress of the United States to adopt the "Lumbee Recognition Act" as proposed in H.R. 5042 and 5.2672.

C E R T I F I C A T I O N

Pursuant to authority contained in Article IV, Section I, (b) and (d) of the Constitution and By-Laws of the Fort McDowell Mohave-Apache Indian Community ratified by the Tribe on October 3, 1936, and approved by the Secretary of the interior on November 24, 1936, the foregoing resolution was adopted this 2nd day of August 19 88, at a Regular Council Meeting at which a quorum of 4 members present, 1 absent, by a vote 4 for and 0 opposed and 0 abstain.

Clinton Pattea, President
Ft. McDowell Tribal Council

Leticia Osife, Secretary
Ft. McDowell Tribal Council

August 2, 1988
Date

Town of Pembroke

POST OFFICE BOX 968
PEMBROKE, NORTH CAROLINA
28372

OFFICE OF THE MAYOR

MUNICIPAL BUILDING
WEST THIRD STREET

NORTH CAROLINA

ROBESON COUNTY

IN THE MATTER OF FEDERAL RECOGNITION FOR THE LUMBEE INDIANS OF ROBESON COUNTY

TOWN OF PEMBROKE
RESOLUTION - 1988 -4

WHEREAS, the Lumbee Indians are the indigenous people of Robeson County where they now constitute approximately one-third of the County population; and

WHEREAS, the Town of Pembroke is ninety five (95%) percent Lumbee Indian; and

WHEREAS, in the Town of Pembroke the Mayor, all four Town council men and the entire Police Force are Lumbee Indian; and

WHEREAS, the Lumbee maintain an active office for the registration of tribal members in the Town of Pembroke; and

WHEREAS, approximately 35,000 Lumbee Indians have duly and properly registered as tribal members; and

WHEREAS, it is the desire of the Lumbee Indians who constitute the Lumbee Tribe to be acknowledged as an Indian Tribe by the Secretary of the U.S. Department of Interior and all branches of Government; and

WHEREAS, such acknowledgment will promote educational, economical opportunities for the Lumbee and general well being.

NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED BY THE TOWN OF PEMBROKE AS FOLLOWS:

A. That the Town of Pembroke wholeheartedly supports and endorses the efforts of the Lumbee Indians to gain acknowledgment as an American Indian Tribe.

B. That copies of this Resolution be forwarded to the Secretary of the U.S. Department of Interior, the North Carolina delegation to the U.S. House of Representatives and the U.S. Senate and all other bodies as deemed appropriate by the Lumbee Tribal Governing body, the Board of Directors of Lumbee Development Association.

Adopted at a duly constituted meeting of the town council of the Town of Pembroke, on this the 1st day of August, 1988.

Milton R. Hunt

THE HONORABLE MILTON R. HUNT, MAYOR

ATTEST:

Leavira Chavis (SEAL)

LEAVIRA CHAVIS, CLERK

RESOLUTION

WHEREAS; The Lumbee Indians are the indigenous people of Robeson County, North Carolina, and

WHEREAS; The Lumbees have historically resided principally in Robeson County where they now constitute approximately 1/3 of the county population, and

WHEREAS; The Lumbees maintain an office and standards for registering tribal members, and

WHEREAS; Approximately 35,000 Lumbee Indians have duly and properly registered as tribal members, and

WHEREAS; It is the desire of the Lumbee Indians who constitute the Lumbee Tribe to be formally acknowledged by the Secretary of the United States Department of Interior and all other branches of governments as an American Indian Tribe, and

WHEREAS; Such acknowledgement will promote the education and general well being of the Tribe.

BE IT NOW, THEREFORE, RESOLVED that the Robeson County Board of Commissioners do wholeheartedly support and endorse the efforts of the Lumbee Indians to gain acknowledgement as an American Indian Tribe.

BE IT FURTHER RESOLVED that the Robeson County Board of Commissioners do hereby order that said resolution be distributed to the Secretary of the United States Department of Interior, the North Carolina delegation to the United States House of Representatives and the United States Senate and all other bodies as deemed appropriate by the Lumbee Tribal Governing Body, The Board of Directors of Lumbee Regional Development Association, as expression of the support from the elected local governing body of Robeson County that acknowledgement of the tribal status of the Lumbee Indians bears full support of the Robeson County Board of Commissioners.

Adopted this the 5th day of July, 1988.

Sammy Cox, Chairman
Robeson County Board of Commissioners

Linda A. Hedgpeth, Clerk
Board of Commissioners

This is to certify that the above resolution was adopted at regular meeting of the Board of Commissioners for Robeson County held July 5, 1988.

Linda A. Hedgpeth, Clerk

2

Robeson County Statistics

AREA—
944 Square Miles

ALTITUDE—
. 125 Feet above Sea Level

CLIMATE—
Mean Annual - 63 degrees

ANNUAL RAINFALL—
45.67 Inches

SNOWFALL—
2.9 Inches

MEAN RELATIVE HUMIDITY—
71%

ASSESSED VALUATION—
1983 - $1.2 Billion

BUILDING PERMITS—
1983 - 920/$21,569,209

GOVERNMENT—
Board of Commissioners / County Manager

NUMBER OF HOUSEHOLDS—
1983 - 33,177

INCOME PER HOUSEHOLD—
1983 - $17,137

POPULATION—
1983 - 101,577
Male - 58.2%
Female - 41.8%
Black - 26.2%
Indian - 30.5%
White - 42.8%
Median Age - 27.4%

RETAIL SALES—
1983 Robeson County: $437,630,901
1983 Lumberton: $255,040,631

TAX RATE—
$ .86 per $100

EDUCATION—
Public: 29 Elementary, 6 Secondary, 6 Combined
Private: 1 K-3, 1 K-12
Parochial: 1 K-6, Catholic
Robeson Technical College
Pembroke State University

HOSPITALS—
Southeastern General Hospital - 355 Beds
V.J. Griffin Memorial Mental Health Clinic - 70 Beds
Robeson County Mental Health Center
North Carolina Cancer Institute
Physicians: 60 Dentists: 20

MOTELS—
17 Motels - 1215 Rooms

NEWSPAPERS—
The Robesonian - Daily except Sunday
The Carolina Indian Voice - Weekly
The Red Springs Citizen - Weekly
The Times Messenger - Weekly
The St. Pauls Review - Weekly
ROBCO News - Weekly

RADIO STATIONS—
AM: WAGR, WFMO, WLAB, WTSB, WYRU
FM: WGSS, WJSK, WZYZ

TRANSPORTATION—
Seaboard System Railroad
Piedmont Airlines - Fayetteville
Sunbird Airlines - Fayetteville
28 Authorized Interstate Carriers
3 Terminals: United Parcel Service, Continental
Greyhound
Lumberton Municipal Airport - 5,000 ft., paved,
Laurinburg-Maxton Airport - 6,500 ft., paved, lig

HIGHWAYS—
Interstate 95, US 74, US 301, US 501, NC 20,
72, NC 130, NC 211, NC 710, NC 711, NC 904

UTILITIES--
Water: 8 Municipal Systems, County-wide Syst
Sewer: 8 Municipal Systems
Gas: NC Natural Gas Corp.
Power: Carolina Power & Light Co.
City Of Lumberton
Lumbee River Electric Membership Corp.
Town of Red Springs
Telephone: Carolina Telephone & Telegraph Co
Southern Bell Telephone & Telegraph
AT&T
CATV: Alert Cable
Community Antenn. . Cablevision, HBO,
Showtime

EMPLOYMENT—
Robeson County 1983 Civilian Labor Force -

FINANCIAL—
5 Banks - Total Assets Exceeds $13 Billion
4 Savings & Loan Associations - Total Assets
$200 Million

AGRICULTURAL—
1983 Cash Receipts: $120,800,038
Tobacco - $50,680,375
Corn - $15,300,000
Soybeans - $16,380,000
Hogs - $12,198,000

CIVIC GROUPS—
More than 100 active civic and service orga
available from Chamber of Commerce.

ECONOMY—
Diversified economic base. Historical agricul
complimented by commercial, industrial, retail,
medical facilities.

INDUSTRY—
There are 75 industries in Robeson County e
over 13,000 employees — manufacturing, app
footwear, metal furniture parts, textiles, lumber,
concrete and plastic, drainage tile, wood shee
transformers, machining, aluminum storm doo
windows, steam valves, drill bits, saws, paper
stainless steel sinks, corrugated containers, pa
fabrics, paper packaging for food and furniture,
speakers, wood and fiberglass boats.

LAW ENFORCEMENT—
48 full-time county officers in addition to to
850 volunteer and full-time firefighters

LABOR FORCE—
47,660
White - 23,209
Black - 10,732
Indian - 13,719

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